CITY OF FISHERS AGENDA

BOARD/COMMISSION: Redevelopment Commission Meeting
DATE: 12/26/2023, at 4:00 PM
DIRECTIONS: Pavilion Conference Room, 10 Municipal Drive, Fishers, IN 46038

In accordance with the Americans with Disabilities Act (ADA), the City of Fishers will, upon request, provide appropriate aid (i.e. interpreters) and/or assistance leading to effective participation for people with disabilities. Anyone who requires such assistance should email Kelly Lewark, Office Manager, no later than 48 hours before the scheduled event or call at (317) 595-3487.

Executive Session:
To conduct interviews and negotiations with industrial and commercial prospects or agents for industrial or commercial prospects under Indiana Code § 5-14-1.5-6.1(b)(4)

1. **Executive Session**
    a. To conduct interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects under Indiana Code § 5-14-1.5-6.1(b)(4)
2. **Call to Order**
3. **Confirmation of Quorum and Proper Notice of Meeting**
4. **Approval of Previous Minutes**
    a. 10-30-23
5. **Approval of Claims**
    a. 12-26-23
6. **Public Hearings**

a. FRC 01R122623 Union/Crossing Project Agreement

b. FRC 02R122623 First Amendment to CityWalk/The Villages

c. FRC 03R122623 Maple Del Property Acquisition Agreement

d. FRC 04R122623 CityView Rebar Land Acquisition Agreement

e. FRC 05R122623 First Amendment to CityWalk/The Villages

f. FRC 06R122623 First Amendment to OnPoint Innovation

g. FRC 07R122623 First Amendment to District South

7. Old Business

8. New Business

9. Meeting Adjournment

CITY OF FISHERS REDEVELOPMENT COMMISSION (FRC) MEETING MINUTES
October 30, 2023

EXECUTIVE SESSION – Executive Session was not held.
REGULAR MEETING:
Mr. Grothe called the Regular meeting to order at 4:00 p.m. A quorum and proper notice of the meeting were confirmed.
FRC members present: Damon Grothe, Brad Johnson (via Teams), Dan Canan, Tony Bonacuse. Anderson Schoenrock was not present. Ben Orr was also present.
Others present: Megan Baumgartner, Lawrence Summers, Jennifer Messer, Jordan Willy, Dustin Meeks

Meeting Minutes: Mr. Canan made a motion to approve the minutes of the October 9, 2023 meeting, seconded by Mr. Bonacuse. Motion approved, 4-0.

Approval of Claims: Mr. Bonacuse made a motion to approve the October 30, 2023 claims, seconded by Mr. Grothe. Motion approved, 4-0.

Mr. Grothe opened the Public Hearing.

1. **PUBLIC HEARING:**

   FRC 01R103023 Public Hearing for the Lease for the creation of District South Allocation area

   Dustin Meeks of Barnes & Thornburg presented the Resolution and Lease for the District South area. This is a step in the approval of Bonds.

   Mr. Grothe opened the Public Hearing. Seeing no one from the Public to speak, he closed the Public Hearing.

   Mr. Grothe asked for a Motion. Mr. Canan made a Motion to approve, seconded by Mr. Bonacuse. The Motion was approved, 4-0.

The meeting adjourned at 4:15 p.m.

Fishers Redevelopment Commission
Claim Docket 12/26/23

Voucher #/ (APV#)	Inv. Date	Vendor	Description		Amount
			Professional Services		

Total **$0.00**

12/26/2023
President, Redevelopment Commission — Date

12/26/2023
Secretary, Redevelopment Commission — Date

12/26/2023
Lisa Bradford, City Controller — Date

Fishers Redevelopment Commission
Consent Agenda 12/26/23

CVK LLC	2023 CAM Reconciliation	$	12,382.65
Switch Offices LLC	Vacant Space 11/23	$	911.48
CVK LLC	Meyer Najem 12/23 Rent	$	35,675.81
OnPoint Hub & Spoke LLC	Hub & Spoke 12/23 Rent	$	38,172.03
Visionary Cove LLC	Launch 12/23 Rent	$	59,293.00
UrbanEco Properties LLC	IoT 12/23 Rent	$	14,634.86
Switch Offices LLC	Vacant Space 12/23	$	911.48
CVK LLC	Meyer Najem 1/24 Rent and CAM	$	36,758.05
OnPoint Hub & Spoke LLC	Hub & Spoke 1/24 Rent	$	38,172.03
Visionary Cove LLC	Launch 1/24 Rent	$	59,293.00
UrbanEco Properties LLC	IoT 1/24 Rent	$	14,634.86
Regions Bank	2016 COIT Debt Service	$	254,250.00
Regions Bank	2019A SPF15 Debt Service	$	469,957.50
Huntington National Bank	2019B Debt Service	$	330,500.00
List Biotheraputics Inc	Pond Work	$	27,219.81
Rebar Techway LLC	Parking and Trail Disbursement 1	$	132,950.00

TIF Transfers

Huntington National Bank	Stations	$	109,821.05
Huntington National Bank	Stations MTA	$	96,039.07
Huntington National Bank	Pullman Pointe	$	201,079.29
Regions Bank	Clarian/Saxony	$	150,563.21
Regions Bank	Exit 10 Area (Town)	$	124,393.30
Regions Bank	Saxony	$	578,222.79
Regions Bank	Village Center	$	543.70
Regions Bank	SR37	$	399,818.78

Regions Bank	Fishers Automotive	$	35,405.74
Regions Bank	CIO	$	115,999.62
Regions Bank	The Yard	$	750,630.48
Bank of New York	Britton Park	$	451,835.47
Bank of New York	Crosspoint	$	191,341.61
Bank of New York	Shops at Geist Pointe	$	71,105.67
		$	**4,802,516.34**

PROJECT AGREEMENT

This Project Agreement (the "**Agreement**") is executed as of the ______ day of ________ 2023, by and among **Thompson Thrift Development, Inc.**, an Indiana corporation, ("**Developer**"), **City of Fishers, Indiana** ("**City**"), **Fishers Town Hall Building Corporation** ("**Building Corp.**"), **City of Fishers Redevelopment Commission** ("**RDC**"), and **City of Fishers Economic Development Commission** ("**EDC**") on the following terms and conditions:

Recitals

WHEREAS, since 2012, the City has been working to fulfill its master plan of creating a sustainable, pedestrian friendly, City where residents live, work and play (the "**Master Development Plan**");

WHEREAS, as part of the Master Development Plan, the City has (a) worked with developers to develop mixed-use developments that include apartments, condominiums, office space and retail; (b) incented multiple high-growth, high-technology businesses to locate to the City; (c) in 2016, entered into an agreement with the State of Indiana for a portion of the City's Nickel Plate District to be designated a certified technology park; (d) developed a biosciences corridor; and (e) designed and developed the City's Nickel Plate pedestrian trail extending throughout the City and serving, among other areas, the Nickel Plate District;

WHEREAS, the City continues to fulfill its Master Development Plan and now desires, in connection with and as a part thereof, to induce the development of additional hotel rooms and commercial amenities in the City;

WHEREAS, Developer is an Indiana-based commercial and residential developer that has designed and constructed mixed-use developments and other residential and commercial amenities throughout the Midwest and in Arizona, Florida and Texas, including, among others, the Fishers District and the Stations, in the City;

WHEREAS, Developer has agreed to invest or cause to be invested approximately $160 Million to $180 Million in completing the Union Project and $60 Million to $85 Million in completing the Crossing Project, if the City will satisfy the City's obligations included herein;

WHEREAS, City Bodies have determined that completion of the Projects is in the best interests of the citizens of the City, and, therefore, City Bodies desire to induce Developer to complete the Projects; and

WHEREAS, to stimulate and induce the development of the Projects on each of the Project Sites, City Bodies have agreed, subject to further proceedings required by law, to provide the economic development incentives described herein.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. <u>Defined Terms</u>. The following capitalized terms are used throughout this Agreement with the meaning set forth in this <u>Section 1</u>:

Additional Crossing Allocation Areas shall mean separate and distinct tax allocation areas established by City Bodies pursuant to Ind. Code § 36-7-14 *et seq*., for the following areas: Parcel 3, Parcel 5 and Parcel 6 as depicted on Exhibit B.

Additional Crossing Area TIF shall mean 100% of the increment generated in the Additional Crossing Allocation Areas.

Allocation Areas shall mean collectively, the Additional Crossing Allocation Areas, the Crossing Allocation Area and the Union Allocation Area.

Ancillary Agreements shall mean, individually or collectively, for each of the Projects, the instruments and agreements referenced or contemplated herein, including, without limitation, the Funding Agreement, Taxpayer Agreement (if required by Developer and consistent with the Laws based on the tax status of the Bonds) and any other agreements or reservations set forth therein and other documents needed to effectuate the intent of this Agreement. For the avoidance of doubt there may be two (2) sets of Ancillary Agreements, one (1) for the Union Project and one (1) for the Crossing Project.

Approved Costs shall mean all Hard Costs and Soft Costs (including capitalized interest on and reserves for the Bonds) related to the development and construction of the Projects.

Approved Plans shall mean for each of the Projects, the plans for the Projects on which the financial analysis for the Bonds is based. For the avoidance of doubt there shall be two (2) sets of Approved Plans, one (1) for the Union Project and one (1) for the Crossing Project.

Assessments shall mean all general and special governmental and utility assessments.

Bond(s) shall mean, for the Projects (and whether referring to the Senior Bonds, Junior Subordinate Bonds or Subordinate Bonds), one or more series of taxable or tax exempt (as collaboratively determined by the City Bodies and Developer pursuant to the Laws; provided, however, in the event of differing determinations concerning the status of the Bonds based on the Laws, the City's determination shall prevail) economic development revenue bonds to be issued under Ind. Code § 36-7-12 *et. seq*. in a maximum par amount that Developer and City Bodies jointly determine will ensure that one hundred percent (100%) of all tax increment revenue generated by the Union Project and Crossing Project, as applicable, is utilized to pay debt service on the Bonds. Such maximum principal amount shall assume that there will be three percent (3%) annual increases in assessed value during the twenty-five (25) year term of each of the Union Allocation Area and Crossing Allocation Area , as applicable (the "AV Increases"). For the avoidance of doubt, the Bonds shall be exclusively based on tax increment to be generated from the Projects together with the AV Increases and shall be payable solely from the applicable Pledged Increment. Except as stated herein with respect to the Yard TIF, the City Bodies shall not be obligated to provide any other source of payment or security for the Bonds. Prior to expiration of the applicable Diligence Period, the Parties shall mutually agree to the par amount of the Bonds and the net proceeds resulting therefrom.

Bond Documents shall mean the documents evidencing and/or securing the Bonds.

Bond Interest Rate shall have the meaning ascribed to such term in Subsection 11(e).

Bond Proceeds shall mean the proceeds of the Bonds, which Bond Proceeds shall be used to pay (a) Approved Costs, (b) Closing Costs; and (c) reasonably incurred and documented administrative costs of the City associated with maintaining the Bonds (the "**Continuing Bond Costs**"). The Bond Proceeds shall be exclusively available for the Projects as herein specified.

Bond Term shall mean twenty-five (25) years from the date of issuance of each of the Bonds.

Budget shall mean, for each of the Projects, a detailed hard and soft cost budget, for (a) the costs of the design and construction of the Project in accordance with the Final Documents and Drawings; (b) the payment of all professional fees and financing fees; and (c) the payment of all other related closing costs and soft costs to be incurred in connection with the development and construction of the Project. The Budget must be in a form and with detail acceptable to Project Lender.

City Body or City Bodies shall mean any of City, EDC, Building Corp. and/or RDC, as applicable.

Claims shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.

Closing shall mean, for each of the Projects, to the extent such has not previously occurred, (a) recordation of the Plat; (b) execution of all Ancillary Agreements; (c) the City's approval of the Budget; (d) the City's issuance of the Bonds and the purchase of the Bonds by the Purchaser; (e) Project Lender issuing the Project Loan to Developer (and Developer authorized to draw upon such Project Loan subject to the satisfaction of customary draw conditions); (f) with respect to the Crossing Project, Developer's payment of the Crossing Project Price to the City; and (g) the Parties approval of applicable financial analyses, including, without limitation, the estimated assessed value, estimated tax increment, available Bond Proceeds, reserve requirements and capitalized interest, if applicable, and schedule of initial and continuing debt service payments (for each project, the "**Project Analysis**").

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with closing of the Bonds, including, without limitation bond issuance costs and administrative fees and counsel fees for both City Bodies and Developer.

Closing Date shall mean each of the dates on which Closing for the Union Project or Crossing Project occurs.

Concept Plan shall mean, for the Union Project, the plan attached hereto as **Exhibit C-1 (Union Project)** and for the Crossing Project the plan attached hereto as **Exhibit C-2 (Crossing Project).**

Crossing Allocation Area shall mean the allocation area established for the Crossing Site.

Crossing Project shall mean collectively, the development and construction of a mixed-use project envisioned to include approximately 275 multifamily units and 20,000 square feet of retail and restaurant space). Notwithstanding the foregoing, the Crossing Project may change in use and scope during the Due Diligence Period and shall ultimately be developed based on the Approved Plans. The Crossing Project shall culminate in approximately $60 Million to $80 Million in private investment in the City, which is subject to change based upon the Approved Plan and corresponding uses.

Crossing Purchase Price shall mean the purchase price agreed to by the Parties based on a shared pro forma, and with such purchase price payable at the time that Developer closes its construction loan and is prepared to commence construction of the Crossing Project.

Crossing Project Site shall mean the approximately **___** acres of real property labeled as the Crossing Site on **Exhibit D**.

Cure Period shall mean a period of: (a) ten (10) days after receipt of written notice of such default given in the case of any monetary default; and (b) thirty (30) days after a party failing to perform or observe any other term or condition of this Agreement to be performed or observed by it receives written notice specifying the nature of the default; provided that, if such default is of such a nature that it cannot be remedied within thirty (30) days, despite commercially reasonable diligent efforts, then the thirty (30) day cure period shall be extended as may be reasonably necessary for the defaulting party to remedy the default, so long as the defaulting party: (i) commences to cure the default within the thirty (30) day period; and (ii) diligently pursues such cure to completion; provided that in no event shall a Cure Period extend more than ninety (90) days after the date of default. Notwithstanding the preceding, a Cure Period shall not be applicable to a default under an Ancillary Agreement, and specific cure periods for such defaults shall be expressly set forth in such Ancillary Agreement.

Development Land shall mean the approximately ten and one-half (10.5) acres of real property depicted on **Exhibit G**.

Diligence Period shall mean, for each of the Projects, the time period commencing on the Effective Date and ending thirty (30) days prior to the applicable Outside Closing Date.

Effective Date shall mean the date set forth in the opening paragraph of this Agreement.

Event of Default shall have the meaning set forth in Section 15.

Excess TIF shall mean any Project Increment remaining, following (i) payment of debt service on the Senior Bonds, (ii) replenishment of reserve funds for the Senior Bonds, (iii) payment of debt service on the Subordinate Bonds, (iv) reimbursement to the Developer for any Shortfall (as defined in Section 11(b)), (v) replenishment of reserve funds for the Subordinate Bonds, (vi) payment of Continuing Bond Costs and (vii) payment of debt service on the Junior Subordinate Bonds.

Final Documents and Drawings shall mean, for each of the Projects, the final design development documents, construction drawings and construction schedule, as each is finalized and approved or reviewed by the City in accordance with City planning and zoning procedure, which Final Documents and Drawings shall strictly comply with the zoning requirements for the Project Site and be materially the same as the Concept Plan.

Force Majeure shall mean, with respect to Developer or City Bodies, any cause that is not within the reasonable control of Developer or City Bodies, respectively, including, without limitation: (a) an act or omission of one of the other parties hereto; (b) unusually inclement weather but not cold, ice, sleet, snow or hail in amounts typical in Indiana;; (c) the unusual unavailability of materials, equipment, services, or labor; and (d) utility or energy shortages or acts or omissions of public utility providers; provided that a party's failure to anticipate normal and customary delays due to weather or normal and customary time periods to obtain Required Permits shall not be deemed Force Majeure.

Funding Agreement shall mean an agreement for each of the Projects pursuant to which the Bond Proceeds shall be disbursed to Developer in a commercially reasonable manner for Approved Costs. Developer shall be responsible for all costs to design and construct the Projects in excess of the Bond Proceeds.

Hard Costs shall mean the costs incurred in connection with construction of each of the Projects, which costs are customarily known in the industry as "hard costs".

Incurred Costs shall mean, if this Agreement is terminated (a) after expiration of the applicable Diligence Period; and (b) prior to the applicable Closing, all actual, out-of-pocket, third-party costs and expenses incurred by a party through the date of such termination, to the extent not previously paid or reimbursed by the other party (not to exceed $100,000).

Junior Subordinate Bonds shall mean Bonds issued for the Union Public Project Garage payable from the Pledged Increment on a junior subordinate basis, following payment from the Pledged Increment of the Senior Bonds and the Subordinate Bonds.

Laws shall mean all applicable laws, statutes, and/or ordinances, building codes, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City's Unified Development Ordinance, the Planned Units Development Ordinance that governs the Project Sites and all applicable environmental laws, as amended.

Original LAA shall mean that certain June 1, 2021, Land Acquisition And Economic Development Agreement by and among Thompson Thrift Development, Inc. and the City Bodies concerning the Development Land, among other obligations and commitments of the parties thereto.

Outside Closing Date shall mean for the (a) Crossing Project on or before October 31, 2026, if such project on Parcel 2 remains financially viable and Developer proceeds to develop such project on Parcel 2, and (b) Union Project on or before December 31, 2025, unless the Outside Closing Date is extended by the City in its sole discretion. In the event Developer or its affiliate do not close on Parcel 2 of the Crossing Project, such land shall remain Commercial Property subject to the Land Acquisition Agreement.

Plat shall mean, for each of the Projects, the plat prepared by Developer that has received all final approvals on or before Closing and is recorded in the Office of the Recorder of Hamilton County, Indiana prior to or contemporaneous with other documents needed for Closing, which Plat is anticipated to create five (5) parcels and a horizontal property regime with multiple parcels.

Pledged Increment shall mean, for the (a) Senior Bonds, (i) the Project Increment, and (ii) the Yard TIF (if available and needed to pay debt service on the Senior Bonds); (b) Subordinate Bonds, (i) the Project Increment following payment of the Senior Bonds, and (ii) the Yard TIF (if available and needed to pay debt service on the Subordinate Bonds and following payment of the Senior Bonds); and (c) the Junior Subordinate Bonds, the Project Increment following payment of the Senior Bonds and the Subordinate Bonds).

Project(s) shall mean, individually or collectively, as applicable, the Crossing Project and the Union Project.

Project Increment shall mean collectively, one hundred percent (100%) of the tax increment generated from the Union Allocation Area, one hundred percent (100%) of the tax increment generated from the Crossing Allocation Area and one hundred percent (100%) of the tax increment generated from the Additional Crossing Allocation Areas.

Project Site(s) shall mean, individually or jointly, as applicable, the Crossing Project Site and the Union Project Site.

Project Lender shall mean, for each of the Projects, a financial institution that is not affiliated with Developer making the Project Loan, and any successor or assignee thereof.

Project Loan(s) shall mean, for each of the Projects, one (1) or more construction loans by and between the Project Lender and Developer, the proceeds of which, along with the Bond Proceeds shall be used to fund development and construction of each of the Projects. The Project Loans shall be disbursed pursuant to the Project Loan Documents (and not pursuant to the Funding Agreement) and the proceeds shall be available at the applicable Closing (subject to the satisfaction of customary draw conditions).

Project Loan Documents shall mean, individually or collectively, the documents evidencing or securing the Project Loan(s).

Property Inspections shall mean, for each of the Project Sites, surveys, borings, tests, inspections, examinations, studies, and investigations, including, without limitation, environmental assessments.

Purchaser shall mean Developer, an affiliate of Developer or a third party identified by Developer.

Real Estate Taxes shall mean all real estate taxes levied on, against, or with respect to all or any specified portion of the Projects and Project Sites.

Reimbursement Amount shall mean the positive difference, if any, between the estimated, annual, aggregate amount of tax increment that the City and Developer mutually determine in their commercially reasonable discretion (collectively, or for each parcel, the "**Additional Estimated Taxes**"), will be generated by each of the parcels within the Additional Crossing Allocation Areas and the annual, aggregate tax increment actually generated by such Additional Crossing Allocation Areas. For example, in the event the City and Developer determine the Additional Crossing Allocation Area will annually generate One Hundred Dollars ($100.00), but only Seventy-Five Dollars ($75.00) is generated, the Reimbursement Amount for such year would equal Twenty-Five Dollars ($25.00).

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for construction, occupancy and use of each of the Projects.

Senior Bonds shall mean Bonds issued for the Projects (but not including the Union Project Public Garage) and payable from the Pledged Increment on a senior basis.

Soft Costs shall mean costs incurred in connection with the Projects, which costs are customarily known in the real estate development and construction industry as "soft costs".

Subordinate Bonds shall means Bonds issued for the Union Project Public Garage and payable from the Pledged Increment on a subordinate basis, following payment on the Senior Bonds and prior to the payment of the Junior Subordinate Bonds. The Subordinate Bonds will also be secured by the Taxpayer Payments.

Substantial Completion shall mean, for each of the Projects, the later of the date that: (a) Developer receives a final or temporary certificate of occupancy for the Project; and (b) the date that Developer's architect certifies, per AIA Form G704, that the construction of the Project is substantially complete in material compliance with all Laws, this Agreement, the Final Documents and Drawings (subject to Permitted Changes), and the Required Permits subject only to tenant improvements, certificates of occupancy for individual tenant spaces, landscaping and minor punch list items that do not materially interfere with the use or operation thereof.

Survey shall mean an ALTA survey of each of the Project Sites, certified as of a current date by a reputable licensed surveyor; which Survey does not show any matters that would: (a) materially and adversely will interfere with the construction and/or use of each of the Projects; or (b) render construction of each of the Projects unusually difficult or costly.

Taxpayer Agreement(s) shall mean, for the securing of the Subordinate Bonds, a developer obligations agreement and consent to real property tax lien imposing a lien against the real property included in the Union Allocation Area, equal in priority to the property tax lien granted to the State of Indiana under Ind. Code § 6-1.1-22-13 as permitted by Ind. Code § 36-7-25-6.

Taxpayer Payments shall mean payments made pursuant to the Taxpayer Agreement(s).

Title Insurer shall mean First American Title Insurance Company.

Union Allocation Area shall mean the allocation area established for the Union Project Site.

Union Project shall mean, collectively, the development and construction of mixed-use project envisioned to include (a) a hotel and 17,500 square feet of retail space; (b) four (4) retail structures totaling approximately twenty-seven thousand, eight hundred square feet (27,800 sq. ft.); (c) approximately sixty-thousand square feet (60,000 sq. ft.) of Class-A office space; (d) a mixed-use building comprised of approximately two hundred fifty (250) units and twelve thousand square feet (12,000 sq. ft.) of retail space; and (e) garages to support other project elements. Notwithstanding the foregoing, the Union Project may change in use and scope during the Diligence Period and shall ultimately be developed based on the Approved Plans. The Union Project shall culminate in approximately $160 Million to $180 Million in private investment in the City, which is subject to change based upon the Approved Plan and corresponding uses. Notwithstanding the foregoing or anything contained herein, when used herein in relation to the allocation of the Subordinate Bonds and Junior Subordinate Bonds proceeds to the Union Project, the Union Project shall mean only the Union Project Public Garage.

Union Project Public Garage shall mean the public parking garage that is part of the Union Project and located on the Union Project Site [as depicted on **Exhibit D**].

Union Project Site shall mean the approximately 10.5 acres of real property depicted on **Exhibit E**.

Yard Allocation Area shall mean The Yard Economic Development Allocation Area, as depicted on **Exhibit A**.

Yard Bonds shall mean the City of Fishers, Indiana Taxable Economic Development Revenue Bonds, Series 2018A (The Yard Retail Project) and the City of Fishers, Indiana Economic Development Revenue Bonds, Series 2018B (The Yard Garage Project).

Yard TIF shall mean for the Yard TIF Term, excess tax increment (any amount not required to pay debt service and other typical administrative costs associated with the Yard Bonds), in an amount not to exceed Five Hundred Thousand and no/100 Dollars, annually from the Yard Allocation Area (as depicted on **Exhibit A**).

Yard TIF Term shall mean the time period remaining under the Laws for the Yard Allocation Area.

2. Interpretation; Term and Other General Matters.

(a) The terms "include", "including" and "such as" shall each be construed as if followed by the phrase "without being limited to".

(b) Whenever a Party’s consent, approval, agreement or election is required or permitted by this Agreement, such consent, approval, agreement or election shall not be unreasonably withheld, conditioned or delayed if expressly provided for herein.

(c) The term of this Agreement shall be for the period commencing on the Effective Date and continuing throughout the Bond Term (the “Agreement Term”). Except as expressly set forth otherwise herein, this Agreement shall terminate upon the expiration of the Agreement Term;

provided, however, the obligation of the Parties to pay any money owed pursuant to this Agreement, shall survive termination of this Agreement) This Agreement concerns two (2) separate and distinct Projects. As such, the terms and provisions herein, unless otherwise specifically stated, equally and separately apply to each of the Projects. For example, and without limitation Developer shall complete the Closing process described in Section 5 and the Plan Refinement process described in Section 12 for each of the Projects.

3. City's Obligations. Subject to the terms and conditions of this Agreement, the applicable City Body shall: (a) in connection with Developer, jointly submit the Plat for final approval and recordation at or prior to Closing for each Project; (b) execute and perform (or cause the applicable City Bodies to execute and perform) the Ancillary Agreements; (c) issue the Bonds and, consistent with the Funding Agreement, make available the Bond Proceeds for Approved Costs and Closing Costs at each Closing, and thereafter, within thirty (30) days after a completed draw request is approved pursuant to the Funding Agreement (which requests shall not be submitted more frequently than monthly); provided, however, the parties acknowledge and agree that Bonds for each of the Projects will not be issued until Closing for such Project; (d) prior to the Union Closing, create the Allocation Areas and pledge the Pledged Increment to repayment of the Bonds; provided, however, any such pledge shall be contingent on Closing for each of the Projects (for example and without limitation, the pledge of increment from the Crossing Allocation Area, shall be subject to Closing for the Crossing Project; provided further that upon the issuance of the Bonds for the Union Project in conjunction with the Closing of the Union Project, the City shall have pledged the increment from the Union Allocation Area and the Additional Crossing Allocation Area to the Bonds for the Union Project, with no contingency) (e) [*intentionally omitted*]; (f) provide reasonable assistance to Developer in connection with any zoning changes or variances determined to be necessary or appropriate for construction and use of the Projects in accordance with the Final Documents and Drawings; provided, however, City Bodies shall not be obligated to incur any expenses in connection with such assistance and shall not be liable for the result of any rezone requests; (g) pay to Developer any Reimbursement Amount owed pursuant to Section 11; (h) own the Union Project Public Garage and contract for its operation by the Developer pursuant to a Revenue Procedure 2017-13 compliant management agreement; provided, however, any such agreement: (i) shall not require the City Bodies to pay or contribute to the cost of operation or maintenance of the Union Project Public Garage, and (ii) shall provide that all revenues generated by the Union Project Public Garage shall be utilized as determined by Developer; and (i) exercise commercially reasonable efforts to cause the review and timely issuance of the City's development and permit applications necessary to develop and construct the Projects on the Project Sites, including, whenever reasonably possible, coordinating with Developer to lower the Projects' costs by supporting the issuance of interim, partial, and/or conditional approvals to allow project critical activities to occur while reserving final approval of less critical activities, to the extent allowed by the Laws; provided, however, City Bodies shall not be obligated to incur expenses related to such assistance.

4. Developer's Obligations.

(a) Subject to the terms and conditions of this Agreement, Developer shall: (1) in connection with the City, jointly submit the Plats for final approval and recordation prior to each of the Closings; (2) complete the Projects (i) substantially in accordance with the applicable Final Documents and Drawings and (ii) with respect to the Union Project, in a manner that results in approximately $140 Million to $160 Million Dollars of private investment in the Union Project, and (iii) with respect to the Crossing Project, in a manner that results in approximately $60 Million to $80 Million Dollars of private investment in the Crossing Project; (3) pay, when due, all Real Estate Taxes and Assessments on the Projects and the Project Sites; (4) make or cause to be made the payments required by the Taxpayer Agreements; (5) at each Closing, cause the Purchaser to purchase of the Bonds; (6) obtain the Project Loans and ensure that proceeds of such Project Loan are available on the applicable Closing Date (subject to the satisfaction of customary draw conditions); and (7) execute and perform the Ancillary Agreements.

(b) Subject to the terms and conditions of this Agreement, Developer will: (i) own the Crossing Project and the Crossing Project Site; (ii) construct and transfer the Union Project Public Garage to the City; (iii) operate the Union Project Public Garage for the City pursuant to a Revenue Procedure 2017-13 compliant management agreement which will not result in private use with respect to the Subordinate Bonds; and (iv) own the Union Project and the Union Project Site, with the exception of the Union Project Public Garage.

5. Closing. Subject to the terms and conditions of this Agreement,

(a) Closing. Subject to the terms and conditions of this Agreement, Closing for the (i) Union Project shall occur on a date designated by Developer that is by or before the Outside Closing Date of July 31, 2025, (ii) Crossing Project shall occur on a date designated by Developer that is by or before the Outside Closing Date of October 31, 2026 (if developed by the Developer and subject to the Land Acquisition Agreement) and (iii) each of the Projects shall occur at the office of the Title Insurer or at such other place as the City and Developer mutually may agree.

(b) Deliveries. At each Closing, unless another time is specifically stated or the required action has previously occurred:

(i) Developer shall execute and deliver to the City evidence reasonably satisfactory to the City that it has closed the Project Loan and is entitled to draw on the Project Loan beginning on such Closing Date (subject to the satisfaction of customary draw conditions);

(ii) The applicable City Bodies and Developer shall execute and deliver the Ancillary Agreements;

(iii) The applicable City Bodies and the Purchaser shall execute and deliver the Bond Documents;

(iv) The applicable City Bodies and Developer shall execute and deliver copies of such resolutions, consents of members, partners, officers and/or shareholders and other evidence as the RDC, EDC, Building Corp., City, Developer, or the Title Insurer reasonably may request;

(v) The applicable City Bodies and Developer shall execute and deliver such other customary documents or instruments as the City, EDC, Building Corp., RDC, Developer or the Title Insurer may request in connection with the Closing;

(vi) Developer shall deliver certificates of policies of insurance required pursuant to **Exhibit F**;

(vii) Developer shall be exclusively responsible for all Closing Costs; provided, however, Bond Proceeds may be used to pay such Closing Costs;

(viii) Each Party shall be responsible for its own legal fees incurred in connection with negotiation of this Agreement and the Closing contemplated by this Agreement; and

(ix) With respect to the Closing for the Crossing Project, Developer shall pay the Crossing Purchase Price to the City.

6. Taxes. At all times during Developer's ownership or operation of each of the Projects and the Project Sites, as applicable, Developer assumes and agrees to pay or cause to be paid all Real Estate Taxes and Assessments becoming a lien against such Project Site whenever due and payable.

7. Conditions to Developer Obligations. Notwithstanding anything to the contrary set forth herein, the obligations of Developer with respect to each of the Projects and Closings are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section 7, each of which shall apply to the Closing for the Union Project and Crossing Project:

(a) Environmental Condition. Prior to expiration of the Diligence Period, Developer shall have conducted all industry standard Property Inspections concluding that there: (i) is no contamination or pollution of the Project Site, or any groundwater thereunder, by any hazardous waste, material, or substance in violation of any Laws, (ii) are no underground storage tanks located on the Project Site, and (iii) are no wetlands on the Project Site [D. Potter?].

(b) Physical Condition. Prior to expiration of the Diligence Period, Developer shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project or require unusually costly development techniques, in accordance with the terms and conditions of this Agreement.

(c) Zoning. Prior to expiration of the Diligence Period, Developer shall determine whether the Project Site is or will be zoned for the Project.

(d) Utility Availability. Prior to expiration of the Diligence Period, Developer shall have determined that gas, electricity, telephone, cable, water, storm and sanitary sewer, and other utility services are or will be: (i) in adjoining public rights-of-way or properly granted utility easements, and (ii) serving, or will serve, the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(e) Required Permits. Prior to expiration of the Diligence Period, Developer shall have (i) obtained; or (ii) determined that it shall be able to obtain, all Required Permits then available for the current stage of construction.

(f) Financial Ability. Prior to expiration of the Diligence Period, Developer shall have determined that it has adequate funds (Project Loan proceeds, Bond Proceeds, and/or cash on hand) to construct the Project.

(g) Ancillary Agreements. On or before the Closing Date, the City (or the applicable City Bodies) and Developer, each exercising commercially reasonable discretion, shall have approved and executed (or execute at the Closing) the Ancillary Agreements.

(h) Bond Proceeds. On or before the Closing Date, City Bodies, using commercially reasonable efforts, shall have: (i) taken all action necessary to authorize the Bonds; and (ii) demonstrated that the Bond Proceeds shall be made available to Developer in accordance with the Funding Agreement.

(i) Financing Documents. On or before the Closing Date, the Project Loan shall be closed, and in connection therewith, the Project Loan Documents, and any additional documents relating thereto, shall be fully executed by all parties thereto and the proceeds of the Project Loan shall be immediately available to Developer without Developer's satisfaction of any additional conditions (except for the satisfaction of customary draw conditions).

(j) Plat. On or before the Closing Date, the Plat shall have received final approval from the Transfer and Mapping Department of the office of the Auditor of Hamilton County, Indiana, and be recorded.

(k) City Body Approvals. As of the Closing Date, City Bodies have obtained all consents and approvals, and adopted all resolutions, required to be obtained and/or adopted in connection with the execution of, and the performance of its obligations under, this Agreement, the Ancillary Agreements, and any Bond Documents to which it is a party.

(l) Compliance. As of the Closing Date, this Agreement, and compliance with the terms hereof, are not in violation of any applicable Laws and no claims or causes of action asserting any violation of Laws shall have been asserted or threatened by any third party.

(m) No Breach. As of the Closing Date: (i) there shall be no breach of this Agreement by City Bodies that the applicable City Body has failed to cure within the Cure Period; and (ii) all of the representations in Section 10(a) shall be true and accurate in all material respects.

If any of the conditions set forth in this Section are not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, Developer either may elect to: (A) waive in writing satisfaction of the conditions and proceed to the Closing; or (B) terminate this Agreement and any executed Ancillary Agreements by delivery of written notice to City Bodies; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by a City Body, Developer shall have all of the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, (1) Developer shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if Developer fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, then Developer shall be deemed to have waived such condition and shall proceed to Closing.

8. <u>Conditions to City Bodies' Obligations</u>. Notwithstanding anything to the contrary set forth herein, the obligations of City Bodies with respect to proceeding to the Closing (unless a specific Closing is stated) with respect to each of the Projects, are subject to the satisfaction or waiver in writing, of the following prior to the applicable period specified in this Section:

(a) <u>Required Permits</u>. Prior to expiration of the Diligence Period, Developer shall have obtained, or City Bodies or Developer have determined that Developer shall be able to obtain, all Required Permits then available for the current stage of construction.

(b) <u>Financial Ability</u>. On or before the Closing Date, Developer shall have demonstrated to City Bodies that it has/will have adequate funds (Project Loan proceeds, Bond Proceeds, and/or cash on hand) to construct the Project.

(c) <u>Environmental Condition</u>. Prior to the expiration of the Diligence Period, Developer shall provide a copy of its Phase I Environmental Site Assessment to City Bodies that there: (i) is no contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws; (ii) are no underground storage tanks located on the Project Site; and (iii) are no wetlands on the Project Site. As of the expiration of the Diligence Period, there shall not have been any material adverse change in the environmental condition of the Project Site.

(d) <u>Physical Condition</u>. Prior to the expiration of the Diligence Period, City Bodies shall have determined that no test, inspection, examination, study, or investigation of the Project Site establishes that there are conditions that would interfere materially with the construction and use of the Project in accordance with the terms and conditions of this Agreement.

(e) <u>Ancillary Agreements</u>. On or before the Closing Date, the City (or the applicable City Bodies) and Developer, each exercising commercially reasonable discretion, shall have approved and executed (or at Closing will execute) the Ancillary Agreements.

(f) <u>Financing Documents</u>. On or before the Closing Date, the Project Loan shall be closed, and in connection therewith, the Project Loan Documents, and any additional documents relating thereto shall be fully executed by all parties thereto and the proceeds of the Project Loan shall be immediately available to Developer without Developer's satisfaction of any additional conditions (except for the satisfaction of customary draw conditions).

(g) <u>Procedure</u>. On or before the Closing Date, the Parties have agreed on the terms on which the Bonds will be issued, and each of the City Bodies has completed all procedures required by the Laws in connection with consummating the transaction contemplated herein, including that: (i) all recommendations, approvals, authorizations, resolutions, and/or ordinances required to be completed, obtained, and/or adopted in connection with: (A) the issuance and sale of the Bonds on the terms to which the Parties have agreed; (B) the use of the Bond Proceeds to pay Approved Costs incurred in connection with the Project; (C) the pledging of the Pledged Increment to the payment of debt service on the Bonds and capitalized interest as applicable; and (D) the Allocation Areas have been established.

(h) Plat. On or before the Closing Date, the Plat shall have received final approval from the Transfer and Mapping Department of the office of the Auditor of Hamilton County, Indiana, and be recorded.

(i) Developer Approvals. On or before the Closing Date, Developer has obtained all consents and approvals, and adopted all resolutions, required to be obtained and/or adopted in connection with the execution of, and the performance of its obligations under, this Agreement, the Ancillary Agreements, and any Bond Documents to which it is a party.

(j) Compliance. On or before the Closing Date, this Agreement, and compliance with the terms hereof, are not in violation of any applicable Laws and no claims or causes of action asserting any violation of Laws shall have been asserted or threatened by any third party.

(k) No Breach. On or before the Closing Date: (i) there shall be no breach of this Agreement by Developer that Developer has failed to cure within the Cure Period; and (ii) the representations and warranties set forth in Subsections 10(b) and (c) shall be true and accurate in all material respects.

If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as their sole and exclusive remedy, City Bodies either may elect to: (i) waive in writing satisfaction of the conditions and proceed to the Closing; or (ii) terminate this Agreement and the Ancillary Agreements by a written notice to Developer; provided, that, with respect to any unsatisfied conditions resulting from a breach of this Agreement by Developer, City Bodies shall have all of the rights and remedies set forth in Section 15. Notwithstanding anything to the contrary set forth herein, (1) City Bodies shall work diligently and in good faith to satisfy the conditions set forth in this Section; and (2) if the applicable City Body fails to terminate this Agreement for any unsatisfied condition on or before the expiration of the time period specified for satisfaction of such condition, such City Body shall be deemed to have waived such condition and shall proceed to Closing.

9. Incurred Costs and Failure to Close. Each of the City Bodies and Developer is entering into this Agreement, and incurring significant expense, under the good-faith assumption that the other Parties will proceed to Closing on or before the applicable Outside Closing Date. Accordingly, if this Agreement is terminated:

(a) due to (i) a continuing Event of Default by one of the City Bodies, (ii) after expiration of the Diligence Period, failure of the applicable City Body to satisfy the condition included in Sections 8(e) or (g), or (iii) failure of any City Body to comply with the representations and warranties included in Section 10(a), then City Bodies shall reimburse Developer for its Incurred Costs.

(b) due to (i) a continuing Event of Default by Developer, (ii) after expiration of the Diligence Period, failure of Developer to satisfy the conditions included in Section 7(a) through 7(g) and 7(i), or (iii) failure of Developer to comply with the representations and warranties included in Sections 10(b) or (c), then Developer shall reimburse the City for its Incurred Costs.

(c) If this Agreement is terminated for any reason other than those set forth above, then each party shall be responsible for paying its own costs and expenses.

(d) Any reimbursement or action required under this Section 9 shall be paid or performed, as applicable, by such party within thirty (30) days after receipt of written invoice or notice therefor, together with reasonable evidence supporting the amount set forth in such invoice.

10. Representations and Warranties

(a) City Bodies. Each City Body represents and warrants to Developer that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement, (ii) the City is a municipal corporation organized and existing under the laws of the State of Indiana, (iii) RDC is the governing body of the City of Fishers Redevelopment Department organized and existing under the laws of the State of Indiana, (iv) EDC is the governing body of the City of Fishers Economic Development Department organized and existing under the laws of the State of Indiana, (v) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (vi) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (vii) this Agreement is the legal, valid, and binding obligation of it, and (viii) it has not engaged or dealt with any real estate broker or agent in connection with the Project, Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of a City Body.

(b) Developer. Developer represents and warrants to each City Body that: (i) Developer is an Indiana corporation, duly existing and validly formed under the laws of the State of Indiana, (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement, (iii) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (v) this Agreement is the legal, valid, and binding obligation of Developer, (vi) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, the Project Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Developer or any party affiliated with Developer, and (vii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual identification, sexual orientation, or national origin. If Developer has employees, Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and, if Developer has employees, Developer will state, in all solicitations or advertisements for employees placed by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual identification, sexual orientation, or national origin. Developer states that it does not currently have employees.

(c) E-Verify. All terms defined in IND. CODE § 22-5-1.7 *et seq*. are adopted and incorporated into this Section. Pursuant to IND. CODE § 22-5-1.7 *et seq*., if Developer has employees, Developer covenants to enroll in and verify the work eligibility status of its employees using the E-Verify program, if it has not already done so as of the Effective Date. If Developer has employees, within ten (10) days after the Effective Date, Developer shall execute an affidavit affirming that: (i) it is enrolled and is participating in the E-Verify program, and (ii) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Developer shall provide the City with documentation that it has enrolled and is participating in the E-Verify program if it has employees. This Agreement shall not take effect until said affidavit is signed by Developer and delivered to the City's authorized representative if Developer has employees. Developer states that it does not currently have employees.

(d) Master Development Plan. The City represents that the completion of the Projects are consistent with, a part of, and will assist it in fulfilling its Master Development Plan.

11. Allocation Areas and Pledged Increment; Bonds Structure.

(a) Allocation Areas. Subject to all procedures required by the Laws and the terms and conditions of this Agreement and prior to Closing for the Senior Bonds, the City Bodies shall establish the Allocation Areas. Subject to all procedures required by the Laws the City Bodies shall pledge: (i) the Pledged Increment to the repayment of the Senior Bonds, the Subordinate Bonds and the Junior Subordinate Bonds; (ii) capitalized interest to the Bonds, as applicable; and (iii) the Taxpayer Payments to the repayment of the Subordinate Bonds. The foregoing pledges will remain effective for the respective Bond Terms.

(b) Payment Order. Pledged Increment will be utilized in the following order: (i) to make current payments of interest and principal on the Senior Bonds, (ii) to replenish reserves for the Senior Bonds, (iii) to make current payments of interest and principal on the Subordinate Bonds, (iv) to remedy any prior shortfalls with respect to payments of interest and principal on the Subordinate Bonds pursuant to the Taxpayer Agreements (in any instance, a "**Shortfall**") or, in the event of a Shortfall, reimburse Developer or a Developer affiliate if such entity makes a payment on the Subordinate Bonds (including its carrying costs for such payments), (v) to replenish reserves for the Subordinate Bonds, (vi) to pay Continuing Bond Costs, and (vii) to make payments of interest and principal on the Junior Subordinate Bonds. City Bodies shall not pledge to the repayment of the Bonds any tax revenues or other funds of the City, except the Pledged Increment. City Bodies shall not be liable for any shortfall in the Pledged Increment. Beginning not less than thirty (30) days prior to the initial date for the first (1st) debt service payment on the Union Project (as stated in the Project Analysis) and continuing for each consecutive year thereafter during the Reimbursement Term (as that term is hereinafter defined), the City shall pay to Developer the Reimbursement Amount, if any, semi-annually on or before May 10th and November 10th of each year of the Reimbursement Term. The "Reimbursement Term" is defined as the earlier of either (i) twenty-five (25) years, or (ii) the date on which owners of the parcels within the Additional Crossing Allocation Area are liable for making a taxpayer payment pursuant to a developer obligations agreement that requires such owners to guarantee tax payments in an amount not less than the Additional Estimated Taxes for such parcel. For the avoidance of doubt, the Reimbursement Term may vary for each parcel within the Additional Crossing Allocation Area depending on when an owner of a parcel within the Additional Crossing Allocation Area is liable for making a payment pursuant to a developer obligations agreement. Notwithstanding the foregoing or anything included herein to the contrary, the Reimbursement Amount shall only be due from the City to the Developer in any semi-annual period, to the extent a Taxpayer Payment is required to be made under a Taxpayer Agreement for such period. Notwithstanding the foregoing with respect to the order of uses of Pledged Increment, the Yard TIF shall be used only to pay debt service on the Senior Bonds and the Subordinate Bonds. The Yard TIF, if available and needed to pay debt service on the Senior Bonds or the Subordinate Bonds will be utilized for debt service on the Senior Bonds before being applied to the Subordinate Bonds.

(c) TIF Revenue Shortfalls. In the event of any Shortfall, such Shortfall shall accrue interest at the Subordinate Bond Interest Rate notwithstanding whether, in the event of a Shortfall, Developer or a Developer affiliate makes a payment on the Subordinate Bonds.

(d) Excess TIF. To the extent there is Excess TIF, such Excess TIF shall be available to the RDC to use for any purpose under the Laws, in its sole discretion.

(e) Interest During Construction. At the option and discretion of Developer, the Bonds shall bear interest (i) at zero percent from their date of issuance until Substantial Completion (and, thereafter, at the Bond Interest Rate, or (ii) at the Bond Interest Rate from their date of issuance throughout the Bond Term. After the Project has been assessed and is generating increment, the Bonds will (i) bear interest at the Bond Interest Rate and (ii) be in accordance with the City authorizations relating to the Bonds. For purposes of this Agreement, the "Bond Interest Rate" shall mean a rate intended to be equal to or less than eight percent (8%), as determined jointly by the Parties, each in the exercise of its reasonable discretion.

(f) Costs of Issuance and Administrative Fees. Developer shall be solely liable for all Closing Costs, which amounts shall be paid from Bond Proceeds, and, subject to Section 11, Bond Proceeds shall additionally be used to pay Continuing Bond Costs.

(g) Bond Structuring. The Bonds may be structured in one or more series to support the Projects. It is currently anticipated that the Senior Bonds will (i) be payable solely from Pledged Increment (including the Yard TIF), with the lien of the Pledged Increment being pledged on a senior basis to the Subordinate Bonds and Junior Subordinate Bonds, (ii) be issued on a tax-exempt basis, (iii) be issued in multiple separate series on two or more different closing dates, and (iv) be utilized to finance the Crossing Project and the Union Project (but not the Union Project Public Garage). In connection with the issuance of the Senior Bonds it is anticipated that the Developer will own and operate the Crossing Project, the Crossing Project Site, the Union Project (but not own the Union Project Public Garage or have other rights with respect to the Union Project Public Garage that would cause interest on the Subordinate Bonds to be taxable) and the Union Project Site. It is currently anticipated that the Subordinate Bonds will (i) be payable from (A) the Pledged Increment (including the Yard TIF), with the lien of the Pledged Increment pledged to the Subordinate Bonds being subject to the prior payment of the

Senior Bonds and senior to the payment of the Junior Subordinate Bonds, and, to the extent the Pledged Increment is insufficient, from the Taxpayer Payments, (ii) be issued on a tax-exempt basis, and (iii) be utilized to finance the Union Project Public Garage. It is currently anticipated that the Junior Subordinate Bonds will (i) be payable from the Pledged Increment, with the lien of the Project Increment pledged to the Junior Subordinate Bonds being subject to the prior payment of the Senior Bonds and the Subordinate Bonds, (ii) be issued on a taxable basis, and (iii) be utilized to finance the Union Project Public Garage. In connection with the issuance of the Subordinate Bonds and Junior Subordinate Bonds it is anticipated that the City will ultimately own and operate the Union Project Public Garage, but that the Union Project Public Garage will be managed by the Developer pursuant to a Revenue Procedure 2017-13 compliant management agreement. Notwithstanding anything contained herein, the parties acknowledge that the proceeds of: (i) the Subordinate Bonds and Junior Subordinate Bonds will be allocated to the Union Project Public Garage portion of the Union Project; and (ii) the Senior Bonds will be allocated to the Crossing Project and the Union Project but excluding the Union Project Public Garage portion of the Union Project. Notwithstanding anything contained herein, including as set forth in Sections 3, 4(a) and 7(h), Bonds may be issued in conjunction with either Project Closing, or on one or more dates separate from and after the Project Closing dates, and there is no requirement that Bonds be issued in conjunction with a Project Closing; provided, however, the Bonds shall not be issued prior to the Union Project Closing.

12. Plan Refinement Process. For each of the Projects, Developer shall prepare and submit the Final Documents and Drawings to the City as part of the Plan Refinement Process. While City may provide written comments to Developer regarding the Final Documents and Drawings, City's rights to approve the Final Documents and Drawings shall be limited to its rights under applicable City process(es) for Zoning and the Required Permits.

13. Inspections. City shall have inspection rights to ensure compliance by Developer with Zoning, the Required Permits, and as otherwise permitted by the Laws.

14. Taxpayer Agreement. For the Subordinate Bonds, to the extent determined necessary for the Subordinate Bonds by the Developer, Developer and the City and the RDC agree to enter into a mutually acceptable Taxpayer Agreement for the Subordinate Bonds, covering the Union Allocation Area, that (a) states that beginning in the calendar year following the first January 1 after Substantial Completion of the Union Project continuing through each calendar year of the applicable Bond Term, Developer agrees to (i) annually (in semi-annual payments on the dates that are twenty (20) days prior to the next-due payment of debt service on the Subordinate Bonds) pay RDC the positive difference, if any, between: (A) the amount of the required debt service payment on the Subordinate Bonds; and (B) the Pledged Increment distributable to RDC for the applicable year available for payment on the Subordinate Bonds, following payment of the Senior Bonds; (b) provides that the payments due by Developer thereunder are secured by an annually renewable lien against the Union Project Site that is the same in nature and priority to (but different from and in addition to) the lien of Real Estate Taxes and, accordingly, shall: (i) be prior to any mortgage or other lien or encumbrance on the Union Project Site other than the lien of Real Estate Taxes; and (ii) renew automatically every January 1 during the Bond Term in its same priority;

and (c) shall be recorded and run with the real property comprising the Union Project Site. Nothing in this Agreement or the Taxpayer Agreement (if required by Developer) shall be deemed to release Developer from any obligation to pay Real Estate Taxes on the Union Project Site regardless of when payable or assessed. The Taxpayer Payments shall only secure payment of the Subordinate Bonds and shall only be required to the extent the Pledged Increment, following payment of the Senior Bonds is insufficient to make payment on the Subordinate Bonds. The Taxpayer Agreement shall be drafted as a guarantee of payments on the Subordinate Bonds and in a manner that does not endanger the tax-exempt status of the Senior Bonds. In the event developer obligations agreements are entered into for the Additional Crossing Allocation Areas, such agreements shall be drafted as guarantees on the Subordinate Bonds and in a manner that does not endanger the tax-exempt status of the Senior and Subordinate Bonds.

15. Default.

(a) Events of Default. It shall be an "Event of Default" if either Party fails to perform or observe any term or condition of this Agreement to be performed or observed by it, if such default or failure is not cured within the applicable Cure Period.

(b) General Remedies. During the continuance of an Event of Default, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting Party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it.

(c) No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Agreement or by the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages as a result of an Event of Default by such party. In the event either party hereto employs an attorney in connection with Claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such Claims. The term "prevailing party" as used in this Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

16. Indemnification. Developer shall indemnify and hold harmless City Bodies from and against any and all Claims arising from or connected with: (i) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; and (iv) the breach by Developer of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, City Bodies' and Developer's obligations under this Section shall survive the termination of this Agreement.

17. Assignment.

(a) Upon Closing, this Agreement shall run with each of the Project Sites and shall be binding on successors in title to the Project Sites. Prior to Substantial Completion of each of the Projects, Developer shall not assign this Agreement without the approval of the City, and the City Bodies shall not assign this Agreement without the prior written approval of Developer; provided that: (i) without the prior written approval of Developer, City Bodies may assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder; and (ii) without the prior written approval of City, Developer may assign, partially or in its entirety, this Agreement to (A) a third party controlling, controlled by or under common control with Developer and/or any subsidiary or affiliate of Developer that has full power, authority, and capability to accept such assignment and perform the obligations of Developer hereunder; or (B) collaterally assign this Agreement (or portion hereof) to a Project Lender.

(b) Notwithstanding any assignment permitted under this Section, the applicable City Bodies or Developer, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release any City Bodies or Developer, as the case may be, from such performance; provided that, if any City Body assigns this Agreement to another agency or instrumentality of the City that: (i) has full power and authority to accept an assignment of this Agreement and carry out the respective obligations hereunder, and (ii) expressly assumes all such obligations in writing; then the applicable City Bodies shall be released from liability under this Agreement for all obligations to be performed after the date of such assignment and assumption. Notwithstanding any provision in this Agreement the contrary, upon an assignment in strict compliance with this Agreement by Developer of its rights and obligations in respect of the Project no other assignee of Developer shall have any responsibility for any obligations of Developer other than those expressly assumed by any such assignee.

18. Notice. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, Lindsey Bennett, City Attorney with copies (via email, only) to: Jennifer Messer, jennifercmesserlaw@gmail.com; and to Developer, Ashlee Boyd (aboyd@thompsonthrift.com), with copies (via email, only) to: Brian Fritts (bfritts@thompsonthrift.com). Each of the Parties may change its address for notice from time to time by delivering notice to the other party as provided above.

19. Authority. Each undersigned person executing this Agreement on behalf of the City, Building Corp., EDC, RDC and Developer represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of the City, Building Corp., EDC RDC, or Developer, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by the City, Building Corp., RDC, EDC and Developer, respectively; provided, however, each of the City's, Building Corp., EDC and RDC's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which the City, Building Corp., EDC and RDC agree to undertake with diligence and in good faith.

20. Force Majeure. Notwithstanding anything to the contrary set forth herein, if any Party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money, including any payment required pursuant to the Taxpayer Agreement (if required by Developer) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. The Parties acknowledge the ongoing COVID-19 pandemic, and agree: (y) to exercise commercially reasonable, good-faith efforts to: (i) consider all then-current information with respect to; and (ii) adjust for shortages that reasonably can be anticipated with respect to materials, equipment, services, and/or labor that reasonably are likely to occur as a result of; the COVID-19 pandemic; and (z) that, notwithstanding that the COVID-19 pandemic falls within the definition of "Force Majeure", the protections of this Section shall not apply to a claim of Force Majeure based on COVID-19 if the applicable party fails to comply with the foregoing requirement.

21. Merger. All prior agreements, understandings, and commitments with respect to the transaction contemplated herein are hereby superseded, terminated, and merged herein, and shall be of no further force or effect. Absent an amendment to, or modification of, this Agreement in accordance with this section, in no event shall City Bodies be obligated to perform any work, incur any expenses, or provide any incentives (whether with respect to the Project Sites, the Projects, or any site or improvements adjacent to, or in the vicinity of, the Project Sites) other than as specifically set forth in this Agreement. This Agreement may be amended or modified only by written instrument executed by City Bodies and Developer.

22. **<u>Original LAA</u>**. The Parties acknowledge and agree that the Original LAA includes certain obligations and rights of the Parties concerning the Development Land. On the Effective Date, the <u>Original LAA</u> shall be null, void and of no further force or effect.

23. **<u>Development Land</u>**. If the Closing for the Union Project does not occur prior to December 31, 2025, then Parties agree that within sixty (60) days thereafter, the City Bodies shall purchase (unless the Parties agree otherwise) the Development Land from Developer for the Development Land Price as calculated pursuant to **<u>Exhibit H</u>** (including, without limitation, the cap of **$5,900,000**.00, the "**Development Land Price**") and pursuant to the terms included in. **<u>Exhibit I</u>** (the "**Development Land Closing Terms**"**).** However, upon Closing on the Union Project**,** the City Bodies' right and/or obligation to purchase the Development land shall automatically and without further action of the Parties terminate.

24. **Miscellaneous**. Subject to Section 17, this Agreement shall inure to the benefit of, and be binding upon, City Bodies and Developer, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Developer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by the City, Building Corp., EDC, RDC, and Developer. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership, employment relationship or joint venture between Developer, the City, Building Corp., EDC, and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the City, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

24. Execution of Agreement. Upon City Bodies' approval and execution of this Agreement, the City shall provide to Developer the executed Agreement (the "City-Executed Agreement"). Within ten (10) days of Developer's receipt of the City-Executed Agreement, Developer shall execute this Agreement and provide the City a copy of such fully executed Agreement. Failure to strictly comply with this Section 23 shall terminate and automatically revoke any offer made by City Bodies herein, and shall, without further action of any of City Bodies, nullify and render of no force or effect City Bodies' approval of this Agreement.

25. Index of Exhibits:

Exhibit A:	Yard Allocation Area
Exhibit B	Additional Crossing Allocation Areas
Exhibit C-1:	Concept Plan (Union Project)
Exhibit C-2:	Concept Plan (Crossing Project)
Exhibit D:	Crossing Project Site
Exhibit E:	Union Project Site
Exhibit F:	Insurance
Exhibit G:	Development Land
Exhibit H:	Development Land Cost
Exhibit I:	Development Land Closing Terms

[signatures on following pages]

IN WITNESS WHEREOF, the City, EDC, Building Corp., RDC and Developer have executed this Project Agreement as of the day and year first written above.

"CITY"

CITY OF FISHERS, INDIANA

By: ___________________________________
Scott Fadness, Mayor

Date: _______________________

“EDC”

CITY OF FISHERS ECONOMIC DEVELOPMENT COMMISSION

By: __________________________________
Its: _________________

Date: _______________________

"**RDC**"

FISHERS REDEVELOPMENT COMMISSION

By:__________________________________
Damon Grothe, President

Date: ____________________________

ATTEST:

By:____________________________
Anderson Schoenrock, Secretary

Date: _______________________

“BUILDING CORP.”

FISHERS TOWN HALL BUILDING CORPORATION

By: ________________________________
Jay Bangert, President

Attest: ________________________________

Secretary

“DEVELOPER”

THOMPSON THRIFT DEVELOPMENT, INC.

By: ___________________________________

________________, _______________

Date: _______________________

EXHIBIT A
Yard Allocation Area

EXHIBIT B
Additional Crossing Allocation Areas

EXHIBIT C-1
Concept Plan (Union Project)

Exhibit C-2
CONCEPT PLAN (CROSSING PROJECT)

EXHIBIT D
Project Site (Crossing Project)

EXHIBIT E
Project Site (Union Project)

EXHIBIT F
Developer Insurance Requirements

Developer shall obtain and maintain and require any general contractor or subcontractor(s) to obtain and maintain the below listed policies of insurance written by Developer reasonably acceptable to the City and for which certificates of insurance shall be provided to the City prior to commencement of any work on each respective Project. The City Bodies shall be named as additional insureds on Developer's Commercial General Liability policies of insurance.

1.	Workers Compensation insurance coverage in accordance with statutory requirements.
2.	Employers Liability Insurance with limits of not less than $1,000,000.00 each accident; $1,000,000.00 Disease- each employee; and $1,000,000.00 Disease Policy Limit.
3.	Commercial General Liability Insurance on ISO form GC0001 10 01 (or a substitute form providing equivalent coverage) and General Contractor and Subcontractors shall provide Developer with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG2037 10 01 (or substitute forms providing equivalent coverage) naming the City and the Redevelopment Commission as additional insureds thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City and the Redevelopment Commission per the follows: $1,000,000.00 Each Occurrence (BI & PD Combined Single Limit); $2,000,000.00 General Occurrence (subject to per project general aggregate provision); and
4.	Business Automobile Liability Insurance: Written in the amount of not less than $1,000,000.00 each accident to include the City and the Redevelopment Commission as additional insureds.
5.	Umbrella Liability: $2,000,000.00.

EXHIBIT H
Development Land Price

The Parties acknowledge and agree that the following expenses are estimates, and the City Bodies shall be responsible for the actual and documented cost; provided however, such costs shall not exceed Five Million Nine Hundred Thousand and no/100 Dollars ($5,900,000.00)

Contract Purchase Price	$4,573,800.00
Title Insurance (*TBD*)	*TBD*
ALTA Survey	$20,000.00
Geotechnical Investigation	$9,000.00
Environmental (Phase 1 and Reliance)	$1,500.00
Development Fee	$0
Recording Fees	$500.00
Escrow Fees (*TBD*)	*TBD*
Loan Fees and Costs (*not to exceed $75K)*	$75,000.00
Additional Due Diligence	$40,000.00
Attorneys' Fees (*not to exceed $55K*)	$55,000.00
Property Taxes (*Assume $60K AV/acre*)	$14,748.30
LAA and Carry Costs	**$4,789,548.30**
Approximate Carry Costs @ 6.0%	$1,005,805.14
Estimated Land Acquisition Cost	**$5,795,353.44**

EXHIBIT I
Development Land Closing Terms

- Development Land Price shall be paid in immediately available funds by wire transfer in accordance with wire transfer instructions to be provided by the title insurer.

- City Bodies may assign the right to acquire the Development Land or any portion thereof but shall be liable to acquire the Development Land until closing on a transfer and conveyance to any third-party.

- Possession of the Development Land or any portion thereof shall be delivered at the City Closing, subject only to (a) the lien of current year taxes and assessments not delinquent; (b) any exceptions to title reflected in the commitment at the time of closing to which the City Bodies do not object; and (c) such other matters that are accepted by the City Bodies in writing.

- City Bodies shall pay or cause to be paid, on the closing date, all closing costs. except that each party shall pay its own attorneys' fees related to the city closing.

- Developer shall deliver: (a) the deed; (b) a vendor's affidavit from in form and substance such that the title insurer will issue the commitment; and (c) such other customary documents or instruments as required to be delivered in connection with a commercial real estate closing.

RESOLUTION NO: FRC 02R122623

RESOLUTION APPROVING LAND ACQUISITION AGREEMENT

WHEREAS, as part of the City of Fishers' (the "City") larger event center project, the City of Fishers Redevelopment Commission (the "Commission") previously approved a certain Land Acquisition Agreement with TTRG IN Fishers Swordfish, LLC ("Developer") to acquire certain Real Property (the "Event Center Property"), and if not developed, the Commercial Property (the "Original LAA");

WHEREAS, since entering in the Original LAA, Developer has agreed to invest or cause to be invested approximately $60 to $80 Million completing the Crossing Project, a project that is anticipated to include approximately 275 multifamily units and 20,000 square feet of retail and restaurant space on property that is part of the Commercial Property;

WHEREAS, as a result, the terms of the Original LAA must be amended to contemplate the new Crossing Project, clarify that the Commission is responsible for all carry costs until Closing and align the obligation to pay Real Estate Taxes with the Project Agreement, all pursuant to an agreement substantially similar to the Amended And Restated Land Acquisition Agreement attached hereto and incorporated herein as **Exhibit A** (the "Agreement"); and

WHEREAS, all capitalized terms used but not defined herein are used with the meaning ascribed to such terms in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission meeting in a duly noticed and regularly scheduled meeting as follows:

Section 1. The Commission hereby approves an agreement substantially similar to the Agreement.

Section 2. The President or Vice-President and Secretary of the Commission are hereby authorized to execute an agreement substantially similar to the Agreement.

Section 3. This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this 26th day of December, 2023.

REDEVELOPMENT COMMISSION OF THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA

YAY **NAY**

YAY		NAY
	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, Three Municipal Drive, Fishers, Indiana, 46038.

Exhibit B
Additional Crossing Allocation Areas

Exhibit D
Project Site (Crossing Project)

AMENDED AND RESTATED LAND ACQUISITION AGREEMENT

This Amended And Restated Land Acquisition Agreement (this "Amendment") is executed as of the ___ day of ____________, 2023 (the "Effective Date"), by and among TTRG IN Fishers Swordfish, LLC, a Delaware limited liability company ("Developer"), the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "Commission"), and the City of Fishers, Hamilton County, Indiana (the "City" and together with the Commission and the Developer, the "Parties" or each a "Party"), on the following terms and conditions:

Recitals

WHEREAS, on or about January __, 2023, the Parties entered into that certain Land Acquisition Agreement pursuant to which Developer agreed to acquire the Parcel, act as a master developer for the City and market for development the Commercial Property for commercial purposes consistent with the City's vision for related Event Center arena amenities, if the City agreed to pay the Master Developer Fee and Land Acquisition Price (the "Agreement"); and

WHEREAS, since entering into the Agreement, the Parties have determined to achieve the highest and best development for the remaining portions of the Parcel, the Parties must restructure provisions of the Agreement concerning the Commission's obligation to pay taxes while also inducing Developer to complete its Union Project; and

WHEREAS, capitalized terms used but not defined herein are used with the meaning set forth in the Project Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. **Recitals**. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.

2. **Mutual Assistance**. The Parties agree, subject to further proceedings required by the Laws, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

3. **Defined Terms**. The following capitalized terms used in this Agreement are used with meaning ascribed to such terms in this Section 3.

Additional Crossing Project Site: Development anticipated by the Parties to include a mixed-use building, Chicken N Pickle restaurant and hotel with approximately 150 keys on the parcels labeled as Parcels 3, 5, and 6 on Exhibit L, respectively.

Related Entity: an entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Developer. As used herein, the term "controls" or "controlled by" means possessing power to direct the management and policies of Developer whether through ownership of voting securities, by contract or otherwise.

Applicable Rate: the prime interest rate published in the *Wall Street Journal* plus three percent (3%) per annum.

Assignment and Assumption Agreement: the general form of the agreement attached as Exhibit A, pursuant to which the Commission assigns its right to acquire the City Property or any portion thereof to a Third-Party Assignee.

BOT: A build, operate, transfer agreement between the City and the Contractor for construction of the (a) Master Infrastructure Improvements throughout the Parcel, (b) Event Center on the City Property, and the (c) parking spaces within the Parking Property.

Broker Fee: The fee or commission (a) charged by a third-party listing broker representing Developer or buyer's broker at a Commercial Property Closing for representing a buyer of Commercial Property; and (b) pre-approved in writing by the Commission (via a City Contact).

City: The City of Fishers, Hamilton County, Indiana, or, in its sole discretion, one of its related bodies and commissions.

City Contact: Any of one of the following: Scott Fadness (fadnesss@fishers.in.us), Jennifer Messer (jennifercmesserlaw@gmail.com), Elliott Hultgren (hultgrene@fishers.in.us) or Megan Baumgartner (baumgartnerm@fishers.in.us) or their successors.

City Preconstruction Fee: An amount equal to (a) City's reimbursement of Developer for third-party, pre-construction costs incurred by Developer (or on behalf of Developer) as documented in the Cost Report, and (b) .75% of the Master Development Fee.

City Property: Approximately 3.81 acres shown and crosshatched on Exhibit B. The City Property includes all the improvements, personal property, and related rights and interests.

City Property Closing: Developer's transfer and conveyance of the City Property to the Contractor.

City Property Closing Date: The date on which the City Property Closing occurs, which date shall be the same as the Parcel Closing Date.

City Purchase Price: An amount equal to the Per Acre Price multiplied by the surveyed acreage of the City Property, which amount shall be determined upon mutual agreement of the Parties prior to Closing together with all Closing Costs associated with the City Property Closing.

Claims: The claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees); provided that in no event shall Claims include consequential or punitive damages.

Closing Costs: All recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with a commercial real estate closing including any commissions approved by the Commission.

Commercial Property: The Parcel minus the (a) City Property; (b) Parking Property and (c) Crossing Project Site upon Closing of the Crossing Project pursuant to the Project Agreement (for the avoidance of doubt, prior to such Closing, the Crossing Project Site shall be deemed part of the Commercial Property).

Commercial Property Closing: Developer's transfer and conveyance of any portion of the Commercial Property to a Third-Party or a Related Entity.

Commitment: A title insurance commitment for an owner's policy of title insurance that: (a) is issued by the Title Insurer; and (b) commits to insure marketable fee simple title to the Remaining Commercial Property or City Property, as applicable.

Contractor: Hunt Construction Group, Inc.

Cost Report: A consolidated job cost report that provides a line-item summary of Developer's third-party expenses incurred from performing the Master Developer Services prior to the City Property Closing, which Cost Report shall be provided to the Commission on the Effective Date and updated and provided to the City Contact not less five (5) days prior to the City Property Closing Date.

Crossing Project: collectively, the development and construction of mixed-use project envisioned to a mixed-use building comprised of approximately 275 multifamily units and 20,000 square feet of retail and restaurant space. Notwithstanding the foregoing, the Crossing Project may change in use and scope during the Due Diligence Period and shall ultimately be developed based on the Approved Plans. The Project shall culminate in approximately $60_Million to $85 Million in private investment in the City, which is subject to change based upon the Approved Plan and corresponding uses.

Crossing Project Site shall mean the approximately ___ acres of real property labeled as the Crossing Site on **Exhibit M**.

Current Year Taxes and Assessment: The Real Estate Taxes and assessments assessed for, and first becoming a lien against, the Remaining Commercial Property, as applicable, during the year in which the Remaining Commercial Property Closing Date occurs.

Deed: A special warranty deed by which the Developer shall convey its interest in the (a) City Property to the Contractor; and (b) Remaining Commercial Property to the Commission and Third-Party Assignee, if applicable, together with all improvements thereon, which Deed shall be subject only to (y) the Permitted Exceptions; and (z) matters created or consented to by the Commission or the Third-Party Assignee, as applicable.

Developer Price: Except for the Crossing Site which shall be conveyed to Developer or a related entity pursuant to the Project Agreement for the Crossing Site Purchase Price, a price equal to the average of two (2) appraisals for any portion of the Commercial Property, with one appraiser to be selected by the City and the other appraiser to be selected by the Developer (with each party paying the cost for its appraisal). The appraisals shall be performed within sixty (60) days of Developer providing the City notice of its intent to transfer any portion of the Commercial Property to a Related Entity to self-develop, and the effective date of the appraisal shall be as of the date such notice is provided by Developer to the City. If the Developer does not close on the portion of the Commercial Property subject to the appraisals within one (1) year of the determination of the Developer Price, then Developer and City will obtain two (2) new appraisals (with each party paying the cost for its appraisal) to determine the Developer Price if Developer subsequently decides to develop the same portion of the Commercial Property.

Disbursement Request shall mean a written request and certification for payment submitted by the Developer to the City in the form attached hereto as Exhibit K, which request and certification for payment shall: (a) be prepared by the Developer; and (b) be accompanied by: (i) a description of the work therein, (ii) a detailed summary of the costs included in such Disbursement Request, and (iii) all related invoices, lien releases, and/or other information reasonably necessary to establish the accuracy of the information set forth in the request and certification.

Easement Agreement: An easement agreement between Developer and City for the operation of the Parking Property, which easement shall contain the minimum terms included in Exhibit C and shall initially create an easement area for the Original Parking Area. In addition, as described in Exhibit C, the City shall provide (or arrange for the BOT to provide) or reimburse Developer for adequate insurance (as mutually determined by City and Developer) associated with Developer's risk of owning the Parking Property operated under the BOT that Developer does not operate or control (with the Project Lender to be named an additional insured), and all such cost of insurance (whether procured by City or Developer) will be paid directly by the City within thirty (30) days of such premium being due.

Event Center shall mean an event center with a footprint of up to 140,000 square feet, approximately 8,000-person capacity and developed and constructed on the City Property.

Event of Default: The meaning set forth in Section 10.

Force Majeure shall mean any cause that is not within the reasonable control of the Parties, including, without limitation: (a) unusually inclement weather but not prolonged inclement cold, ice, sleet, snow or hail as is typical in Indiana during winter; (b) the unusual unavailability of materials, equipment, services, or labor; (c) utility or energy shortages or acts or omissions of public utility providers; and (d) epidemics, pandemics, and other public health circumstances resulting in a governmental declaration of a public health emergency, provided that a Party's failure to anticipate normal and customary delays due to weather or normal and customary delays in obtaining Required Permits shall not be deemed Force Majeure.

Land Acquisition Price: The price, as applicable, calculated pursuant to Exhibit D for any portion of the Remaining Commercial Property.

Laws: All applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City's Unified Development Ordinance, as applicable.

Line of Credit: That certain revolving line of credit by and between Project Lender and Developer in the maximum principal amount of $5,780,523.00 that is exclusively used for (a) pursuit costs in the maximum amount of $500,000.00, and (b) paying interest on the Project Loan in the maximum principal amount of $5,270,523.00.

Master Developer Fee: 2% of the total amount of the total budget for the Event Center as set forth on Exhibit I to this Agreement, .75 of the Master Developer Fee to be paid to Developer by Contractor at the City Property Closing. The remaining 1.25% of the Master Developer Fee shall be paid proportionately based on the per square foot basis of the Remaining Commercial Property (excluding the Parking Property) and shall be paid to Developer at each closing of a portion of the Commercial Property. Any remaining portion of the Master Development Fee left unpaid, shall be paid to the Developer at the Remaining Commercial Property Closing. Notwithstanding when the Master Developer Fee is paid, Developer shall be responsible for completing all Master Developer Services.

Master Developer Services: (a) Prior to the City Property Closing, all services necessary to acquire the Parcel, including, without limitation, (i) causing the completion of all Property Inspections, (ii) obtaining the Owner approvals and (iii) consulting with the City; and (b) after the City Property Closing, all services described on **Exhibit H**.

Master Development Plan: The design of vertical improvements throughout the Parcel to serve the Event Center and maximize use of the Commercial Property, including, without limitation, the design of water, sewer, stormwater detention, utilities and roads.

Master Infrastructure Improvements: The horizontal improvements to be constructed pursuant to the Master Development Plan.

MPA: The Multi-Party Agreement of even date herewith and executed by Developer, City, the Commission and the Project Lender.

Original Parking Area: The Parking Property as depicted on Exhibit E.

Owner: Sunbeam Development Corporation and G&I X MJW 11100 USA PARKWAY LLC (each owning a portion of the Parcel).

Parcel: Approximately 62.18 acres as depicted on Exhibit F.

Parcel Closing Date: The date on which Developer acquires the Parcel, which date shall be mutually determined by Developer, Contractor and the Commission after the Commission has approved the Commitment for the Parcel.

Parking Property: Approximately 62.21 acres of the Parcel, which Parking Property will accommodate not less than 2,900 parking spaces (approximately 44.59 acres) and shall be configured in a manner to maximize development and use of the Commercial Property. The land comprising the Parking Property (and subject to the Easement Agreement) may change from time-to-time, in the sole discretion of the City

Parking Property Closing: The transfer and conveyance of real property used for parking for the Event Center from the Developer to the Commission, (a) which Parking Property Closing shall occur upon within (30) days written notice from the Commission to the Developer; and (b) at which the Commission shall pay (i) the Per Acre Price, (ii) Closing Costs, (iii) fees charged by the Project Lender, if any; and (iv) applicable portion of the Master Developer Fee.

Per Acre Price: An amount calculated as follows: acreage of the City Property, Parking Property or Remaining Commercial Property, as applicable x approximately $315,810.00, The Per Acre Price shall be based on the surveyed acreage of the Parcel and the final price of the Parcel on the Parcel Closing Date.

Permitted Exceptions: (a) the lien of Current Year Taxes and Assessments not delinquent; (b) any exceptions to title reflected in the Commitment (i) at the time that Developer acquires the Parcel, or (ii) to which the Commission or Third Party Assignee, as applicable, does not object; and (c) such other matters that are accepted by the Commission and Third Party Assignee, if applicable, in writing or which Commission and Third Party Assignee, if applicable, is deemed to have waived pursuant to the terms and conditions of this Agreement.

Post-Closing MDS Costs: Third-party costs and expenses pre-approved by a City Contact and incurred by Developer.

Project Agreement: That certain October ___, 2023 Project Agreement by and among Thompson Thrift Development, Inc. the City, Fishers Town Hall Building Corporation, the Commission, and City of Fishers Economic Development Commission.

Project Lender: The National Bank of Indianapolis.

Project Loan: A loan issued by Project Lender to Developer in the maximum amount of $19,219,477.00 for the sole purpose of acquiring the Parcel on the Parcel Closing Date.

Property Inspections: The studies, inspections and assessments listed on Exhibit J.

Purchase Agreement: Both the (i) December 14, 2021 Purchase Agreement by and between Sunbeam Development Corporation and Developer, as amended by that certain First Amendment to Purchase Agreement dated March 14, 2022, and (ii) the Purchase and Sale Agreement by and between G&I X MJW 11100 USA PARKWAY LLC and Developer, and any other amendments to either Purchase and Sale Agreement approved by the City.

Real Estate Taxes and Insurance: From the Effective Date until (a) Closing on the Union Project all real estate taxes levied on, against, or with respect to the Commercial Property not including the Additional Crossing Project Site, and (b) Closing for the Crossing Project, all real estate taxes levied on, against, or with respect to the Crossing Project Site.

Related Entity: A third party controlled by or under common control with Developer.

Remaining Commercial Property: Any portion of the Commercial Property not previously transferred and conveyed to Developer, a Related Entity or third party prior to the Remaining Commercial Property Closing Date.

Remaining Commercial Property Closing Date: The date on which (a) the Commission pays the Land Acquisition Price, to the extent such number is a positive number; and (b) the Remaining Commercial Property is transferred and conveyed to the Commission and/or any Third-Party Assignee pursuant to a Deed. Notwithstanding anything to the contrary included herein, unless the Parties mutually agree in writing, the Remaining Commercial Property Closing Date shall not occur (y) sooner than forty-eight (48) months from the Effective Date, or (z) later than eighty-four (84) months from the Effective Date. The Commission shall provide Developer sixty (60) days written notice of the Remaining Commercial Property Closing Date; provided, however, if Developer is under contract for the sale of a portion of the Commercial Property to a third-party purchaser, the Developer shall have the option of closing on such sale to a third-party purchaser or assigning its rights as seller under such contract to the City as part of the City's closing on the Remaining Commercial Property.

Required Permits: All permits, licenses, approvals, and consents required by the Laws for construction of the Master Infrastructure Improvements.

Third-Party Assignee: shall mean one or more entities to which the Commission assigns its right and obligation to acquire the Remaining Commercial Property or portion thereof pursuant to the Assignment and Assumption Agreement.

Title Insurer: shall mean First American Title Insurance Company (Gina Longere).

4. **Developer Obligations**. For and in consideration of the Commission satisfying in full the Commission Obligations (as defined herein below), the Developer shall:

a) complete all Master Developer Services;
b) obtain all necessary approvals of the Owner as required under the Purchase Agreement;
c) regularly update the City Contact on the progress of the (i) Developer acquiring the approvals needed from the Owner under the Purchase Agreement; and (ii) easements needed from property owners adjacent to the Parcel or as otherwise required by Owner;
d) upon written approval of the City, acquire the Parcel pursuant to the Purchase Agreement;
e) transfer the City Property to the Contractor on the City Property Closing Date pursuant to the Deed;
f) on the City Property Closing Date, enter into the assignment and assumption agreement with Contractor attached hereto and incorporated herein as Exhibit G (the "Contractor Assignment");
g) contemporaneously with acquisition of the Parcel, enter into an Easement Agreement with the City;

h) prior to developing or leasing for development (which lease shall be subject to an approval similar to that described in Section 6(a)), any portion of the Commercial Property, pay the Project Lender the Developer Price;
i) contract or continue to contract with Kimley Horn for design of the Master Improvements, including paying the costs associated with such contract and applying to the City for reimbursement of such costs as such costs are incurred pursuant to Disbursement Requests;
j) market the Commercial Property for commercial development and upon obtaining the City's approval (as described in Section 6), enter into agreements for the sale or lease of the Commercial Property (or portions thereof), which agreement(s) shall, at a minimum, include the information provided by Developer to the City to obtain the City Approval;
k) transfer the Commercial Property to third parties;
l) promptly, using commercially reasonable care and expertise, satisfy the requirements included in Exhibit H.
m) on the Remaining Commercial Property Closing Date, transfer and convey the Remaining Commercial Property to the Commission and/or to a Third-Party Assignee, if applicable;
n) strictly adhere to the Laws;
o) to the extent necessary to comply with this Agreement, obtain all Required Permits;
p) otherwise satisfy the terms of this Agreement; and
q) enter into and cause the Project Lender to enter into the MPA on the City Property Closing Date.

(individually or collectively, the "Developer Obligations")

5. **Commission and/or City Obligations**. For and in consideration of the Developer satisfying in full the Developer Obligations, the Commission shall:

a) contemporaneously with Developer's acquisition of the Parcel, (i) cause the Contractor to pay the City Purchase Price to Developer and acquire the City Property pursuant to the Deed; and (ii) pay the Developer the City Preconstruction Fee;
b) contemporaneously with Developer's acquisition of the Parcel, enter into the Easement Agreement;
c) pay Developer the Master Developer Fee as follows: .75 at the City Property Closing (as part of the City Pre-Construction Fee), with 1.25% of the Master Developer Fee paid proportionately based on the per square foot basis of (i) Commercial Property transferred and conveyed at any Commercial Property Closing; and/or (ii) Remaining Commercial Property transferred and conveyed at any Remaining Commercial Property Closing. Any remaining portion of the Master Development Fee left unpaid shall be paid at to the Developer at the Remaining Commercial Property Closing. Moreover, for conveyances described in foregoing subsections (i) and (ii), "proportionally based" shall mean acreage transferred/17.62.
d) contemporaneously with Developer's acquisition of the Parcel, cause the Contractor to enter into the Contractor Assignment;
e) promptly review all results of the Property Inspections and provide comment on such results, any Owner approvals and easement acquisitions;
f) on the Remaining Commercial Property Closing Date, pay or cause to be paid to Developer the Land Acquisition Price and accept transfer and conveyance, and if

applicable, cause a Third-Party Assignee to accept transfer and conveyance of such Remaining Commercial Property pursuant to the Assignment and Assumption Agreement;

g) at the Parking Property Closing, transfer and convey the Parking Property to the Commission; and

h) reimburse Developer for all Post-Closing Master Developer Services Costs within thirty (30) days after Developer properly submits a Disbursement Request, which requests shall not be submitted more frequently than monthly).

(individually or collectively, the "Commission Obligations")

6. <u>Commercial Property Transfers</u>.

(a) <u>Third Party Transfers</u>. Prior to the Remaining Commercial Property Closing Date, Developer shall control the Commercial Property for purposes of development, subject to this <u>Section 6(a).</u> Prior to transferring and conveying any portion of the Commercial Property to a third party (except a Third-Party Assignee) or a Related Entity (in either instance, an "End User") or developing or leasing for development any portion of the Commercial Property, Developer shall: (a) seek the written approval of a City Contact (the "Commission Approval"); by providing, at a minimum, the following information (i) price to be paid for the Commercial Property; (ii) amount of Commercial Property to be transferred to an End User; (iii) proposed use of the Commercial Property; (iv) the amount of the Broker Fee, if any; and (v) any additional information requested by the City Contact; (b) if the City Contact provides such Commission Approval, provide Commission a draft a purchase agreement between Developer and any End User, which purchase agreement shall be subject to the Commission's written approval, in its sole discretion, prior to becoming effective; (c) provide the closing statement for any such transaction to the City Contact prior to the Commercial Property Closing; and (d) transfer and convey the Commercial Property to the End User pursuant to the purchase agreement approved by the Commission. Until the Project Loan and Line of Credit are satisfied in full, after payment of the amounts owed to the Project Lender in 6(b), all proceeds received from the transfer and conveyance of Commercial Property to any End User shall be, at the Commercial Property Closing, paid to the Project Lender for application to the Project Loan or Line of Credit, in the discretion of the Commission.

(b) <u>Cost Allocation</u>. For any conveyance of the Commercial Property (whether to a third-party or a Related Entity of Developer), the purchase and sale agreement for such portion of the Commercial Property shall provide the purchase price (the "Purchase Price"), and state that such Purchase Price shall be divided between Developer and the City at the Commercial Closing. At the Commercial Closing, the closing statement shall include,(i) a grossed up sales price to include an allocation of land and unreimbursed costs comprising the Land Acquisition Price on a per acre basis (or as approved by the City and Developer to maximize savings), and (ii) Closing Costs including any Broker Fee and attorneys' fees (the "Base Purchase Price"). The Base Purchase Price shall be remitted to Developer and used be to pay down debt on the Project Loan. The positive difference, if any, between the Purchase Price and the Base Purchase Price shall be remitted to the City and set aside and maintained in an escrow account as collateral for the outstanding Project Loan until the earlier of the Remaining Commercial Property Closing or the balance of the Project Loan being repaid in full.

7. Representations And Warranties.

(a) Commission. The Commission represents and warrants to Developer that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) it is the governing body of the City of Fishers Redevelopment Department organized and existing under the laws of the State of Indiana; (iii) subject to completion of the applicable proceedings required by Laws, it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (vi) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (iv) this Agreement is the legal, valid, and binding obligation of it; and (v) it has not engaged or dealt with any real estate broker or agent in connection with the Parcel, or the acquisitions, transfers and conveyances described herein and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of the Commission.

(b) Developer. Developer represents and warrants to the Commission that: (i) Developer is an Indiana corporation duly existing and validly formed under the laws of the State of Indiana; (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (iv) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; (v) this Agreement is the legal, valid, and binding obligation of Developer; (vi) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Project, Site, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Developer or any party affiliated with Developer; (vii) Developer shall not, without the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned, enter into a loan, mortgage, note or other encumbrance that provides any third-party an interest in the Commercial Property; and (viii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Developer will state, in all solicitations or advertisements for employees placed by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) E-Verify. All terms defined in IND. CODE § 22-5-1.7 et seq. are adopted and incorporated into this Section 8. Pursuant to IND. CODE § 22-5-1.7 *et seq.*, Developer covenants to enroll in and verify the work eligibility status of all its employees using the E-Verify program, if it has not already done so as of the Execution Date. Within ten (10) days after the Execution Date, Developer shall execute an affidavit affirming that: (i) it is enrolled and is participating in the E-Verify program; and (ii) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Developer shall provide the City Contact with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Developer and delivered to the City Contact.

8. [Intentionally Omitted.]

9. Remaining Commercial Property Closing Date—Purchase & Sale.

(a) Purchase and Sale. Subject to the terms and conditions of this Agreement, Developer hereby agrees to sell and convey to Commission, and Commission hereby agrees to purchase and acquire from Developer, all of the Developer's assignable and transferable right, title and interest in and to the Remaining Commercial Property.

(b) Purchase Price. The Land Acquisition Price shall be paid in immediately available funds by Commission at the City Closing by wire transfer in accordance with wire transfer instructions to be provided by Title Insurer.

(c) Remaining Commercial Property Closing. The Commission's obligation to acquire the Remaining Commercial Property from the Developer is absolute and unconditional; provided, however, the Parties acknowledge and agree that (a) the Commission may assign the right to acquire the Remaining Commercial Property (or a portion thereof), pursuant to the Assignment and Assumption Agreement to the Third-Party Assignee. Notwithstanding transfers to any Third-Party Assignee, unless and until the Project Loan and Line of Credit are paid in full, the Commission shall be liable for any amount owed on the Project Loan and/or Line of Credit so long as such amount was incurred strictly pursuant to and consistent with this Agreement, including, without limitation, any amount paid by Developer to replenish the Line of Credit (each, a "Developer Interest Payment"), which Developer Interest Payment shall incur interest at the applicable rate for the Line of Credit. For the avoidance of doubt, (i) neither the Commission nor City shall be liable for payment of any portion of the Project Loan or Line of Credit other than those amounts specifically accruing pursuant to the terms of this Agreement; and (ii) penalties or fees incurred and/or accruing on the Project Loan or Line of Credit as a result of Developer's default under the Loan Documents shall be, in the absence of default hereunder by the Commission, the sole liability of Developer.

(d) Possession. Possession of the Remaining Commercial Property or any portion thereof shall be delivered to Commission, and if applicable, to the Third-Party Assignee at the Remaining Commercial Property Closing, subject only to the Permitted Exceptions.

(e) Closing Costs. Commission, and if applicable, the Third-Party Assignee, shall pay or cause to be paid, on the Remaining Commercial Property Closing Date, the Land Acquisition Price.

(f) Closing Deliveries.

i. Developer shall deliver the (1) Deed; (2) a vendor's affidavit from in form and substance such that the Title Insurer will issue the Commitment; (3) a certification that all the representations and warranties set forth in Section 7 remain true and accurate in all respects as of the Remaining Commercial Property Closing Date;

ii. Commission, and if applicable, the Third-Party Assignee, shall cause to be paid the Closing Costs by wire transfer of immediately available funds;

iii. Commission, and if applicable, the Third-Party Assignee shall cause to be paid the cost of the owner's policy of title insurance for the Remaining Commercial Property;

iv. Such other customary documents or instruments as required to be delivered in connection with any closing under this Agreement (whether required by the other Party or the Title Insurer); and

10. Default.

(a) Events of Default. It shall be an "**Event of Default**" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it.

(b) General Remedies. Whenever an Event of Default occurs, the non-defaulting Party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting Party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition; which right, in the Event of Default by Commission, is specifically intended to give Developer the right to seek specific performance of Commission's obligation to cause the purchase of the Commercial Property hereunder); or (iv) cure, for the account of the defaulting Party, any failure of the defaulting Party to perform or observe a material term or condition of this Agreement to be performed or observed by it. Any past due payments due under this Agreement (specifically including the payment of the Land Acquisition Price) shall bear interest at the Applicable Rate until paid in full. Moreover, if the non-defaulting Party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting Party shall reimburse the non-defaulting Party for all such costs and expenses, together with interest at the Applicable Rate until paid in full.

(c) No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting Party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting Party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting Party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting Party to give notice to the defaulting Party, other than such notice as may be required by this Agreement or by the Laws. In no event shall any Party hereunder be liable to the other for punitive or consequential damages as a consequence of an Event of Default by such Party. In the event either Party hereto employs an attorney in connection with Claims by one Party against the other arising from the operation of this Agreement, the non-prevailing Party shall pay the prevailing Party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such Claims. The term "prevailing Party" as used in this Agreement shall include, but not be limited to, a Party who obtains legal counsel or brings an action against the other by reason of the other Party's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

11. **Notice**.Any notice required or permitted to be given by any Party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other Party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to the Commission at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Chris Greisl, City Attorney, 1 Municipal Drive, Fishers, Indiana 46038 and Jennifer Messer (via email) at jennifercmesserlaw@gmail.com; and to Developer at 111 Monument Circle, Suite 1500, Indianapolis, Indiana 46204, Attn: Ashlee Boyd, Managing Partner and Attn: Brian C. Fritts, General Counsel [Need Project Lender Notice Information]. Each of the Parties may change its address for notice from time to time by delivering notice to the other Party as provided above.

12. **Indemnification**. Developer shall indemnify and hold harmless the Commission from and against any and all Claims arising from or connected with: (i) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Parcel by Developer or any party acting by, under, through, or on behalf of Developer; (ii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Parcel by Developer or any party acting by, under, through, or on behalf of Developer; (iii) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; (iv) Developer suffering or causing the filing of any mechanic's or materialmen's lien against the Site or Project; or (v) the breach by Developer of any term or condition of this Agreement.

13. **Assignment**. Developer shall have the right to assign this agreement to any affiliate or special purpose entity created for purposes of completing its responsibilities and shall have the right to enter into the Collateral Assignment as a guarantee for the Project Loan and/or Line of Credit. Without the prior written approval of Developer, the Commission may (a) assign this Agreement to another agency or instrumentality of the City that legally is able to perform the respective obligations hereunder; and (b) assign, partially or in its entirety, the rights and obligations included herein regarding the City Closing, to a Third-Party Assignee and cause Developer to convey the Remaining Commercial Property, or any portion thereof, to such Third-Party Assignee. If the Commission assigns this Agreement to any Third-Party Assignee, the Commission shall not be released from its obligations hereunder until such time as all portions of the Remaining Commercial Property have been conveyed to the Commission and/or a Third-Party Assignee and the Total Land Acquisition Price has been paid in full.

14. **Merger**.All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect, including, without limitation that certain May 10, 2022 Professional Services Agreement by and between Developer and the Commission.

15. **Force Majeure**.Notwithstanding anything to the contrary set forth herein, if either Party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the Party asserting Force Majeure shall deliver written notice to the other Party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

16. **Miscellaneous**. This Agreement shall inure to the benefit of and be binding upon the Commission, Developer, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Developer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Developer may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by the Commission and Developer. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any Party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create an employment relationship, partnership or joint venture between Developer the Commission or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Parcel is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

17. Exhibits:

Exhibit A Assignment and Assumption Agreement

Exhibit B	City Property
Exhibit C	Easement Agreement
Exhibit D	Land Acquisition Price
Exhibit E	Original Parking Area
Exhibit F	Parcel
Exhibit G	Contractor Assignment
Exhibit H	Post-Closing Master Development Services
Exhibit I	Project Budget
Exhibit J	Property Inspections
Exhibit K	Disbursement Request
Exhibit L	Additional Crossing Project Site
Exhibit M	Crossing Project Site

[*signatures on following pages*]

IN WITNESS WHEREOF, the Commission, the City and Developer have executed this Land Acquisition Agreement as of the day and year first written above.

"**Commission**"

CITY OF FISHERS REDEVELOPMENT COMMISSION

By:_________________________________
Damon Grothe, Vice-President

ATTEST:

By:______________________________
Anderson Schoenrock, Secretary

"**The City**"

CITY OF FISHERS,
HAMILTON COUNTY, INDIANA

____
Scott Fadness, Mayor

“DEVELOPER”

TTRG IN FISHERS SWORDFISH, LLC

By: ____________________________________

Its: ____________________________________

EXHIBIT A
FORM ASSIGNMENT & ASSUMPTION AGREEMENT

[FOLLOWING PAGES]

ASSIGNMENT AND ASSUMPTION OF RIGHT TO ACQUIRE REMAINING COMMERCIAL PROPERTY

THIS ASSIGNMENT AND ASSUMPTION OF RIGHT TO ACQUIRE REMAINING COMMERCIAL PROPERTY ("Assignment Agreement") is made this _____ day of _____________, 202__, by and between the City of Fishers Redevelopment Commission, a commission of the City of Fishers ("City") authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "Assignor") and _______________ ("Assignee") as follows:

RECITALS

WHEREAS, Assignor is a party to that certain _______ ___, 202_ Land Acquisition Agreement (the "LAA Agreement") by and among Thompson Thrift Development, Inc., an Indiana corporation ("Developer"), the Commission and the City;

WHEREAS, pursuant to the LAA Agreement, Assignor has the right to assign to a Third-Party Assignee certain rights and obligations concerning Remaining Commercial Property or a portion thereof;

WHEREAS, Assignor desires to assign to Assignee and Assignee, who is a Third-Party Assignee, desires to assume certain rights and obligations included in the LAA Agreement pursuant to this Assignment Agreement;

WHEREAS, Developer has consented to this Assignment Agreement pursuant to the Consent attached hereto; and

WHEREAS, capitalized terms used but not defined herein are used with the meaning set forth in the LAA Agreement.

AGREEMENT

NOW THEREFORE, the foregoing recitals are incorporated into this Assignment Agreement by reference to such recitals and in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. **Assignment**. Assignor hereby assigns, transfers, sets over and conveys to Assignee, all of Assignor's rights, obligations and interests to acquire the portion of the Remaining Commercial Property described and depicted on **Exhibit A** (the "RCP"), including, without limitation (a) the obligation to pay the Land Acquisition Price for the RCP on the Remaining Commercial Property Closing Date, and (b) the right to acquire the RCP on the Remaining Commercial Property Closing Date (jointly, the "Assigned Rights & Obligations").

2. **Assumption**. Assignee hereby assumes the Assigned Rights & Obligations.

3. **Project Loan Payment**. On the Remaining Commercial Property Closing Date, if a

balance remains on the Project Loan or Line of Credit, the purchase price based on the Per Acre Price for the acreage being conveyed (the applicable purchase price minus Closing Costs and the amounts owed to third parties, if any, the "Purchase Price") shall be, at the Remaining Commercial Property Closing, paid to the Project Lender for application to the Project Loan or Line of Credit. Assignor shall be responsible for ensuring such payment toward the Project Loan or Line of Credit; provided, however, if the Project Loan and Line of Credit do not have a remaining balance, the Purchase Price shall be paid to the City.

4. **Indemnity**. Assignor shall indemnify, hold harmless and defend Assignee from and against all Claims that may be incurred by Assignee as a result of this Assignment Agreement and that arise prior to the Effective Date of this Assignment Agreement. Assignee shall indemnify, hold harmless and defend Assignor from and against all Claims that may be incurred by Assignor as a result of this Assignment Agreement and that arise on or after the Effective Date of this Assignment Agreement.

5. **Miscellaneous**. This Assignment Agreement shall inure to the benefit of and be binding upon the Assignor, Assignee, and their respective successors and assigns. This Assignment Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Assignment Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Assignment Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Assignee waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Assignee may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Assignment Agreement may be modified only by a written agreement signed by the Assignor and Assignee. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Assignment Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Assignment Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Assignment Agreement. If any provision of this Assignment Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable, the remainder of this Assignment Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Assignment Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Assignment Agreement are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope of this Assignment Agreement or the scope or content of any of its provisions. Nothing contained in this Assignment Agreement shall be construed to create an employment relationship, partnership or joint venture between Assignee the Assignor or their successors in interest. In computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the RCP is located, in which event the period shall run until

the end of the next day which is neither a Saturday, Sunday, or legal holiday.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date and year first above written.

Assignor

City of Fishers Redevelopment Commission

____

_________________, President

Attest: ____________________________

__________________, Secretary

Assignee:

____

_________________, ________________

EXHIBIT A
Remaining Commercial Property

CONSENT

Thompson Thrift Development, Inc. hereby CONSENTS to the Assignment Agreement dated __________________ by and between the City of Fishers Redevelopment Commission and _______________________.

Thompson Thrift Development, Inc.

____

EXHIBIT B
CITY PROPERTY

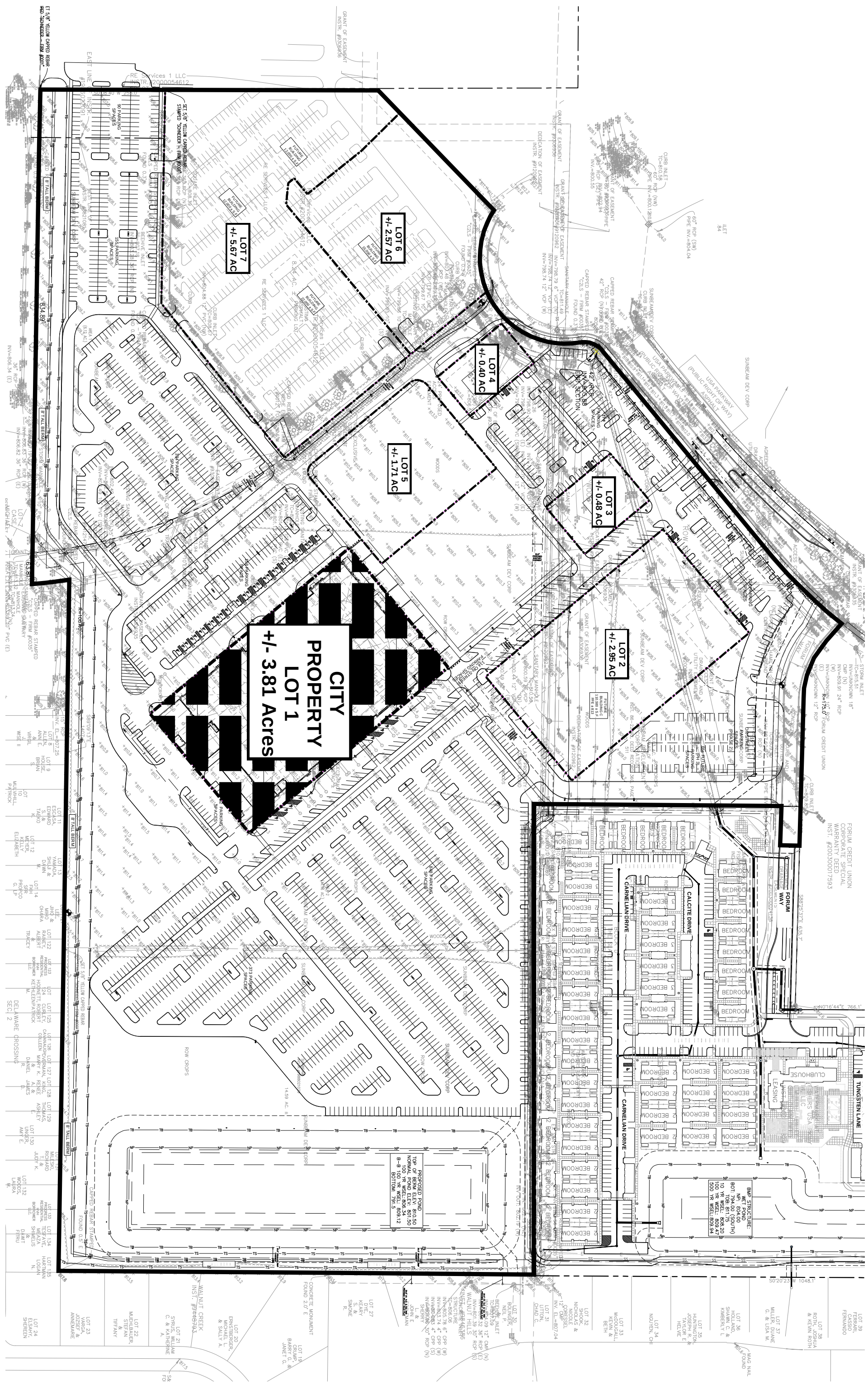


EXHIBIT C
EASEMENT AGREEMENT – MINIMUM TERMS

- Perpetual, non-exclusive easement in gross in favor of the City and the public for parking vehicles and pedestrian access to the parking spaces.

- City's right to limit the use of, charge for, or otherwise regulate the use of City Parking Spaces

- City's rights to assign its rights under the easement

- City's right to maintain and operate the parking spaces and the Parking Property

- The Party's right to mutually determine and change the areas encompassed by the easement

- Not less than <u>2900</u> parking spaces to be included within the easement area

- City's right to operate and control the easement area

- City to provide an indemnity agreement satisfactory to Developer, including, without limitation, a waiver of all defenses available to the City under the Indiana Tort Claims Act or similar statutes (as well as all time limitations on filing under such acts) which might abrogate or limit City's indemnity obligations to Developer.

- City's obligation to either carry insurance, or require the BOT to carry insurance, with limits acceptable to Developer in its sole discretion, or to reimburse Developer for all such insurance related to the Parking Property that Developer will not control.

- Extinguishment of such easement at the time of the Parking Property Closing Date.

EXHIBIT D
LAND ACQUISITION PRICE CALCULATION

The Land Acquisition Price shall be calculated as follows: the aggregate of all reasonably incurred and documented costs in the categories included below.

"COSTS"

1.	Price based on the Per Acre Price for the acreage being conveyed	
2.	Closing Costs	
3.	Real Estate Taxes	
4.	Developer Interest Payments, if any	
5.	____ annual APR on items 1-3 from the date incurred	
6.	Remaining Unpaid Master Development Fee	
7.	Pre-approved fees owed and not previously paid by Commission, including without limitation pre-approved marketing, legal, survey, and other related similar fees.	

EXHIBIT E
ORIGINAL PARKING AREA

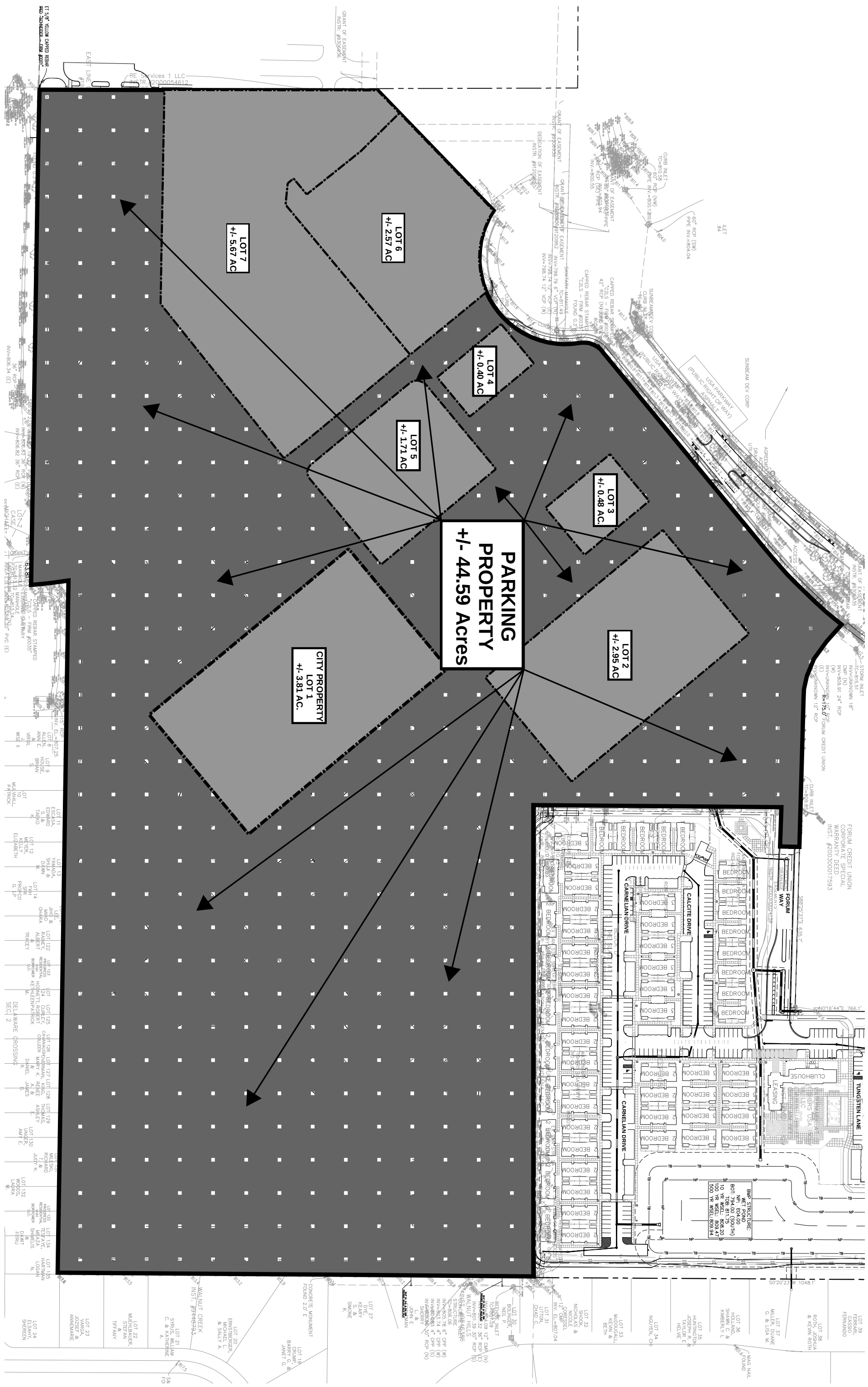


EXHIBIT F
PARCEL
[Included on Following Page]

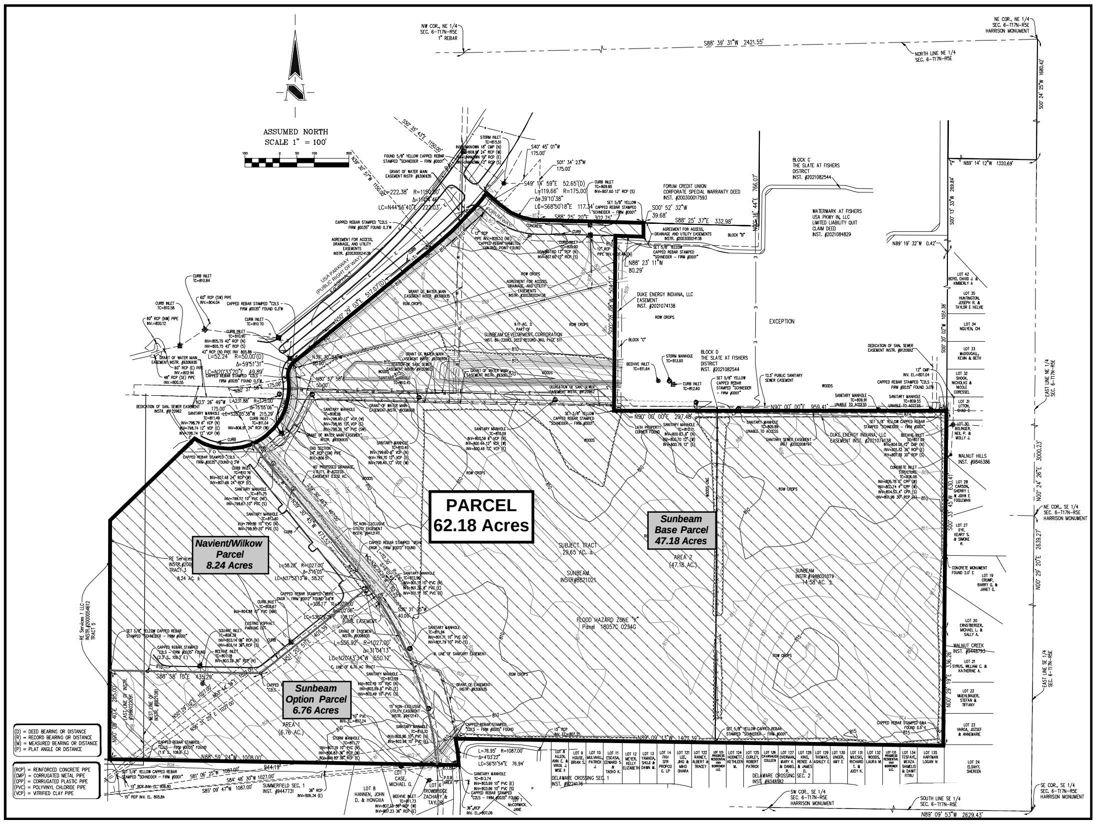

ASSUMED NORTH
SCALE 1" = 100'
PARCEL
62.18 Acres
Navient/Wilkow
Parcel
8.24 Acres
Sunbeam
Base Parcel
47.18 Acres
Sunbeam
Option Parcel
6.76 Acres
EXCEPTION

EXHIBIT G
CONTRACTOR ASSIGNMENT

[FOLLOWING PAGES]

<u>ASSIGNMENT AND ASSUMPTION OF RIGHT TO ACQUIRE REMAINING COMMERCIAL PROPERTY</u>

THIS ASSIGNMENT AND ASSUMPTION OF RIGHT TO ACQUIRE REMAINING COMMERCIAL PROPERTY ("Assignment Agreement") is made this _____ day of _____________, 2023, by and between Thompson Thrift Development, Inc., an Indiana corporation (the "Assignor") and Hunt Construction Group, Inc., an Indiana corporation ("Assignee") as follows:

RECITALS

WHEREAS, Assignor is a party to that certain _______ ___, 202_ Land Acquisition Agreement (the "LAA Agreement") by and among Thompson Thrift Development, Inc., an Indiana corporation ("Developer"), the City of Fishers Redevelopment Commission and the City of Fishers;

WHEREAS, Assignee is a party to that certain ___________, 202_ Public-Private Agreement For The Development And Construction Of The Fishers Event Center And Related Master Improvements (the "BOT");

WHEREAS, the LAA Agreement and the BOT contemplate that Assignor will assign to Assignee and Assignee will assume from Assignor the contracts and work product listed on Exhibit A to Assignee (the "Contracts and Work Product");

WHEREAS, the Assignment Agreement is and shall be deemed the (a) Contract Assignment described in the LAA Agreement and (b) the Assignment and Assumption Agreement described in the BOT;

WHEREAS, pursuant to this Assignment Agreement, Assignor desires to assign to Assignee and Assignee desires to assume from Assignor the Contracts and Work Product; and

WHEREAS, capitalized terms used but not defined herein are used with the meaning set forth in the LAA Agreement or BOT, as applicable.

AGREEMENT

NOW THEREFORE, the foregoing recitals are incorporated into this Assignment Agreement by reference to such recitals and in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. **<u>Assignment</u>**. Assignor hereby assigns, transfers, sets over and conveys to Assignee, all of Assignor's rights, obligations and interests in the Contracts and Work Product (the "Assigned Rights & Obligations").

2. **Assumption**. Assignee hereby assumes the Assigned Rights & Obligations.

3. **Indemnity**. Assignor shall indemnify, hold harmless and defend Assignee from and against all Claims that may be incurred by Assignee as a result of this Assignment Agreement and that arise prior to the Effective Date of this Assignment Agreement. Assignee shall indemnify, hold harmless and defend Assignor from and against all Claims that may be incurred by Assignor as a result of this Assignment Agreement and that arise on or after the Effective Date of this Assignment Agreement.

4. **Miscellaneous**. This Assignment Agreement shall inure to the benefit of and be binding upon the Assignor, Assignee, and their respective successors and assigns. This Assignment Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Assignment Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Assignment Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Assignee waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Assignee may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Assignment Agreement may be modified only by a written agreement signed by the Assignor and Assignee. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Assignment Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Assignment Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Assignment Agreement. If any provision of this Assignment Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Assignment Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Assignment Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the Parties and still be valid and enforceable. The captions in this Assignment Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Assignment Agreement or the scope or content of any of its provisions. Nothing contained in this Assignment Agreement shall be construed to create an employment relationship, partnership or joint venture between Assignee the Assignor or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the RCP is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date and year first above written.

Assignor

Thompson Thrift Development, Inc.

____

__________________, President

Assignee:

Hunt Construction Group, Inc

____

__________________, _________________

<u>EXHIBIT A</u>
<u>Contracts & Work Product</u>

EXHIIBIT H
POST-CITY CLOSING MASTER DEVELOPMENT SERVICES

- Market and/or develop the Commercial Property for its highest and best use
- Meet and discuss development concepts and potential end users with the City
- Take reasonable, necessary steps to transfer and convey the Commercial Property pursuant to Section 6
- Contract with and oversee Kimley Horn as it works to design the Master Improvements necessary to serve the Commercial Property; provided however, Kimley Horn shall maintain its own SCI shall maintain its own errors and omissions policy for the design of the Master Improvements
- Oversee construction of the Master Improvements serving the Commercial Property
- Coordinate with Kimley Horn and the Contractor concerning any changes necessary to the most current design of the Master Improvements serving the Event Center
- Seek City preapproval of any third-party costs to complete the Master Development Services

EXHIBIT I

PROJECT BUDGET

Changes to the Project Budget will be provided by Developer to City at any point in time prior to the Remaining Land Closing, and the City shall review and approve any such changes, with such approval to not be unreasonably withheld or delayed.

EXHIBIT J

LIST OF PROPERTY INSPECTIONS COMPLETED BY DEVELOPER PRIOR TO THE PARCEL CLOSING DATE

EXHIBIT K
DISBURSEMENT REQUEST

Disbursement No.: ____________________

Date: ____________________

Disbursement Amount: $_______________________

__________________ (the "Developer"), pursuant to a Land Acquisition Agreement ("LAA") between Developer and _______________ (the "City"), hereby requests the disbursement of funds in the Disbursement Amount stated above and certifies that such amount is in accordance with the attached invoices, lien releases and other documentation provided in support of this Disbursement Request.

This Disbursement Request shall also constitute representations to the City that, to the best of the Developer's knowledge, information, and belief based on adequate on-site inspections to check the quality or quantity of the work, the work has progressed in accordance with the LAA The issuance of an application for payment also shall constitute a representation that the recap of the expenses summarized in Schedule I attached hereto accurately reflects such expenses and that the entities associated with such expenses are entitled to payment in the amount certified, or that the Developer has already paid such entities and is entitled to reimbursement in the amount certified.

By:

Printed: ____________________________________

Title: ______________________________________

Schedule I

[Narrative summary of expenses included in Disbursement Request]

Exhibit L
Additional Crossing Project Site

RESOLUTION NO: FRC 03R122623

RESOLUTION OF THE CITY OF FISHERS REDEVELOPMENT COMMISSION APPROVING CONTRACT FOR PURCHASE OF PROPERTY

WHEREAS, the City of Fishers Redevelopment Commission (the "Commission") previously acquired certain properties within the former Maple Del neighborhood from HG Acquisition Company, LLC ("Seller");

WHEREAS, at the time, the Commission did not acquire a property generally located at 8145 E. 116th Street, Fishers, Indiana 46038 and identified as Tax Parcel No. 14-14-01-01-03-005.000 (the "Property");

WHEREAS, Commission has satisfied the provisions of Ind. Code 36-7-14 *et. seq*. concerning acquisition of the Property;

WHEREAS, the Commission now desires to enter into an Agreement substantially similar to the purchase agreement attached hereto as **Exhibit A** (the "Agreement"); and

WHEREAS, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission meeting in regular session as follows:

Section 1. The Commission hereby approves an agreement substantially similar to the Agreement.

Section 2. The President and Secretary of the Commission are authorized to execute an agreement substantially similar to the Agreement.

Section 3. This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this _____th day of December, 2023.

REDEVELOPMENT COMMISSION OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA

YAY		NAY
	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, Three Municipal Drive, Fishers, Indiana, 46038.

<u>CONTRACT FOR PURCHASE OF PROPERTY</u>

The CITY OF FISHERS REDEVELOPMENT COMMISSION, a commission of the City of Fishers authorized and existing pursuant to Ind. Code 36-7-14 *et. seq*. ("**Purchaser**"), hereby agrees to purchase from HG ACQUISITION COMPANY, LLC ("**Seller**") that certain real estate located in Fishers, Hamilton County, Indiana, consisting of approximately .44 acres, which real estate is generally located at 8145 E. 116th Street, Fishers, Indiana 46038, identified as Tax Parcel No. 14-14-01-01-03-005.000 and more particularly described and depicted on **<u>Exhibit A</u>**, attached to and made a part of this Contract (the "**Land**"), together with all of Seller's right, title and interest in and to any and all: (a) buildings and improvements located thereon, attached thereto or used in connection therewith; provided, however, Purchaser acknowledges and agrees that Seller has the right to remove all equipment, fixtures and machinery prior to Closing (after which time Seller's rights, title and interest in such equipment, fixtures and machinery shall transfer in full to Purchaser, without further action of the parties) (the "**Improvements**"); and (b) rights, interests, privileges and easements appurtenant or appertaining thereto (the "**Appurtenances**" and together with the Land and Improvements, the "**Property**") for Three Hundred Seventy-One Thousand Eight Hundred Seventy Dollars ($371,870.00) (the "**Purchase Price**"), subject to and upon the terms and conditions set forth in this Contract.

1. **<u>Purchase Price</u>.** On the Closing Date (as defined in <u>Section 2</u> hereof), Purchaser shall pay Seller the Purchase Price.

2. **<u>Diligence Period and Closing</u>.** For purposes of this Contract, there shall be no "**Diligence Period**". The Closing shall occur on or before December 29, 2023 (the "**Closing Date**"); provided however, the Closing Date may be extended pursuant to <u>Section 6.2</u>, and such later date shall be deemed the "Closing Date". The closing will take place at the office of First American Title Insurance Company (Attn: Gina Longere) ("**Title Insurer**") or such other place as the parties may mutually agree in writing. Purchaser shall pay all title insurance premiums, the cost of recording the Deed (as such term is defined in <u>Section 2</u> below) the cost of filing the Indiana Sales Disclosure form and all other customary closing costs. Each party hereto shall pay the fees of any attorneys or other consultants hired by such party in connection with the closing.

3. **<u>Closing Documents</u>**. At closing, Seller shall deliver to Purchaser or its assignee or designee: (a) a duly executed Limited Warranty Deed (the "**Deed**") conveying merchantable and marketable fee simple title to the Property free of any encumbrance made or suffered by said Seller except the Permitted Encumbrances (as defined in <u>Section 6.2</u> below); (b) a fully executed vendor's affidavit sufficient to remove all standard title exceptions and in form and substance acceptable to the Title Insurer and Purchaser; (c) a duly executed non-foreign affidavit in form and substance satisfactory to Purchaser and the Title Insurer; (d) a duly executed Indiana Sales Disclosure Form in the form required by Indiana law; and (e) any and all other documents contemplated by this Contract or required by law to consummate the sale of the Property. At closing, Purchaser shall deliver to Seller: (x) a duly executed Indiana Sales Disclosure Form in the form required by Indiana law; (y) the Purchase Price; and (c) all other documents contemplated by this Contract or required by law to consummate the sale of the Property.

4. **Date of Possession**. Possession of the Property shall be delivered on the Closing Date, free and clear of all rights and claims of any other party to the possession, use or control of the Property.

5. **Taxes and Assessments**. Purchaser assumes and agrees to pay (a) all assessments becoming a lien after the Closing Date. Seller shall pay (a) all assessments for improvements not assumed by Purchaser; and (b) all delinquent real estate taxes and assessments (and penalties and interest thereon, if any).

6. **Conditions of Performance**. Purchaser's obligations under this Contract are subject to the timely and complete satisfaction of each of the following conditions, unless waived in writing by Purchaser:

6.1 Title Insurance. On or before the Closing Date, Purchaser shall obtain, at Purchaser's sole cost and expense, a current title insurance commitment for the Property issued by the Title Insurer, in which commitment the Title Insurer shall agree to insure for the full amount of the Purchase Price merchantable and marketable fee simple title to the Property and issue such endorsements as Purchaser may reasonably request, at Purchaser's sole cost and expense (the "**Title Commitment**"). On or before the Closing Date, Purchaser shall notify Seller, and Seller shall remove or cause to be released all mortgages, other security agreements, UCC financing statements, leases and monetary liens ("**Mandatory Cure Items**"). If necessary, the Closing Date shall be extended day by day for the number of days required by Seller to remove the Mandatory Cure Items ("**Mandatory Cure Period**"). During the Mandatory Cure Period, Carry Costs (as such term is defined in the Land Acquisition Agreements) shall not apply or accrue. Notwithstanding anything to the contrary herein, no Mandatory Cure Items shall be deemed a permitted encumbrance. The term "**Permitted Encumbrances**" as used herein includes: (i) real property taxes and assessments for the year in which closing occurs and thereafter, not yet due and payable; and (ii) zoning and other regulatory laws and ordinances affecting the Property.

7. **Conditions of Performance**. Purchaser's obligations under this Contract are subject to the timely and complete satisfaction of each of the following conditions, unless waived in writing by Purchaser:

8. **Litigation and Representations**. As of the Closing Date, no action or proceeding before a court or other governmental agency or officer shall be pending (and to the best of either Seller's or Purchaser's knowledge, no such action or proceeding shall be threatened) that materially impairs the value of the Property or prevents Purchaser from undertaking and completing Purchaser's intended use and development of the Property. As of the Closing Date, the representations and warranties set forth in Sections 8 and 9 shall be true and accurate in all material respects.

9. **Covenants, Representations and Warranties**. Seller hereby covenants, represents and warrants to Purchaser (and shall be deemed to covenant, represent and warrant to Purchaser on the Closing Date) that: (a) there is no condemnation or similar proceeding which is pending or, to Seller's knowledge, threatened against the Property or any part thereof, and which has not been disclosed by Seller to Purchaser; (b) Seller has not received any written notification from any governmental agency, authority or instrumentality of any pending or threatened assessments on or against the Property for the cost of improvements to be made with respect to the Property or any part thereof; (c) after the Effective Date, Seller will not create, permit or suffer any lien or other encumbrance to attach to or affect the Property and improvements thereon, except for the lien of nondelinquent real estate taxes and liens and encumbrances which will be fully discharged on or before the Closing Date; (d) to Seller's knowledge there are no claims, actions, suits, proceedings or investigations pending or, threatened with respect to or in any manner affecting the Property or Seller's ownership thereof; (e) no work has been or will be performed, and no materials have been or will be furnished to, the Property or any portion thereof which will result in any mechanics', materialmen's or other liens against the Property or any portion thereof which will not be fully discharged on or before the Closing Date; (f) Seller is the fee simple owner of the Land and Improvements and has not sold, assigned, transferred, leased, subleased, encumbered or conveyed any right, title or interest whatsoever in or to the Property; (g) prior to the closing, Seller shall not sell, assign, transfer, lease, sublease, encumber or convey any right, title or interest whatsoever in or to the Property or any portion thereof without Purchaser's prior written consent, nor shall Seller amend, modify, extend, terminate or alter any currently existing agreement or document relating to the Property without Purchaser's prior written consent; (h) to Seller's knowledge, during the time it has owned the Property, neither the Property nor any portion thereof has been used for the treatment, storage or disposal of any hazardous, special or other wastes, substances, materials, constituents, pollutants or contaminants as defined under applicable federal, state or local laws or regulations promulgated thereunder; (i) to Seller's knowledge, the Property is not located in an area designated as requiring flood insurance as established by the Flood Disaster Act of 1973, as amended; (j) to Seller's knowledge, the Property complies with all local, state and federal laws and regulations in all material respects; and (k) prior to the closing, Seller agrees not to market, sell, advertise or seek proposals to develop or sell the Property or any portion thereof or enter into any agreements for the marketing, sale or development of the Property or any portion thereof to any entity or person other than Purchaser. In addition to the foregoing, Seller represents and warrants to Purchaser that no current leases, licenses and/or occupancy agreements for the Property.

10. **Damage and Condemnation**. Seller shall: (a) maintain the Property and, deliver the Property to Purchaser on the Closing Date in the same condition as on the Effective Date, ordinary wear and tear excepted; and (b) comply with all federal, state and local laws, statutes, ordinances, rules and regulations applicable to the Property and the use thereof. If the Property shall be damaged, destroyed or condemned, in whole or in part, or if any notice of condemnation shall be given at any time after the Effective Date, Purchaser, at its sole option, may (a) cancel this Contract, or (b) proceed with closing. If Purchaser elects to proceed with closing, then Purchaser may (a) apply the proceeds of any condemnation award or insurance policy to reduce the Purchase Price, or (b) accept an assignment of such proceeds.

11. **Condition of Property**. Seller and Purchaser agree Purchaser shall accept possession of the Property "as is, where is, and with all faults," with no right to set off or reduction in the Purchase Price. The sale of the Property shall be without representation or warranty of any kind, expressed or implied, including, without limitation, warranty of income potential, operating expenses, uses, merchantability or fitness for a particular purpose (but specifically excluding the warranty of title to the Land to be given in the Deed at closing and the representations and warranties set forth in Sections 8 and 9 above and in Seller's other closing documents, if any), and Seller hereby disclaims any such representation or warranty. Purchaser specifically acknowledges that Purchaser is not relying on any representations or warranties of any kind whatsoever, expressed or implied, from Seller as to any matter concerning the Property (except for the warranty of title to the Land to be given in the Deed at closing and the representations and warranties set forth in Sections 8 and 9 above and in the Seller's other closing documents, if any).

12. Notices. All notices shall be deemed delivered to Seller when deposited in the U.S. mail, addressed to Seller at City of Fishers Redevelopment Commission, Attn: Kari Adriano, 3 Municipal Drive, Fishers, Indiana 46038 with a copy to Jennifer C. Messer (via email only) at jennifercmesserlaw@gmail.com; and to Purchaser when so deposited and addressed to Purchaser at Hageman Acquisition Company, LLC, Attn.: Tom Dickey, 12321 E. New Market Street, Suite 200, Carmel, Indiana 46032

13. Default. Seller agrees that money damages are not an adequate remedy for breach of this Contract by Seller (including any breach of Seller's representations and warranties), and, in lieu of any other remedies available to Purchaser in the event of a breach by Seller.

14. General. The terms and provisions of this Contract shall be governed and construed in accordance with the laws of the State of Indiana. The captions and section numbers shall not be considered in any way to affect the interpretation of this Contract. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and personal representatives. This Contract is the final expression of the complete and exclusive agreement between Seller and Purchaser. This Contract shall not be construed with resort to any presumption against the preparer or maker hereof. The term "**Contract**" as used herein means this Contract for Purchase of Property.

15. Authority. Each undersigned person signing on behalf of any party that is a corporation, partnership or other entity certifies that (a) he or she is fully empowered and duly authorized by any and all necessary action or consent required under any applicable articles of incorporation, bylaws, partnership agreement or other agreement to execute and deliver this Contract for and on behalf of said party; (b) that said party has full capacity, power and authority to enter into and carry out its obligations under this Contract; and (c) that this Contract has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

16. Recording. This Contract shall be recorded in the office of the Hamilton County Recorder (the "**Recorder's Office**") by the Title Insurer on the Closing Date. Upon (a) payment in full of the Development Services and Property Maintenance Expenses, and (b) request of Purchaser, Seller shall promptly cause to be recorded a release of this Contract in the Recorder's Office.

17. Brokers. Purchaser and Seller hereby represent and warrant to each other that they have not dealt with any broker in connection with this transaction. Purchaser and Seller hereby further represent and warrant to each other that no fee, commission or similar compensation shall be payable by Seller or Purchaser or any other person as a result of any agreement or action by Seller or Purchaser, respectively.

18. **<u>Assignment</u>.** On or before the Closing Date, each of Purchaser and Seller shall have the right to assign or transfer all or any portion of its rights under this Contract; provided, however, that Purchaser shall not be released from any liability hereunder.

19. **<u>Calculation of Time</u>**. If any time period specified herein expires on a Saturday, Sunday or any legal holiday, such time period shall be automatically extended through the close of business on the next regular business day.

20. **<u>Counterparts</u>**. This Contract may be executed in counterparts (including execution of counterpart signature pages), each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

21. **<u>Electronic Signatures</u>**. Signatures to this Contract transmitted via pdf or an accepted electronic service shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original of this Contract with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Contract.

[Remainder of page intentionally left blank; signature pages follow]

SELLER:

HG ACQUISITION COMPANY, LLC, an Indiana limited liability company

By:______________________________
Shane Hageman, Manager

PURCHASER:

CITY OF FISHERS REDEVELOPMENT
COMISSION

By: ______________________________________
__________________________, President

Attest: ______________________________________
____________________________, Treasurer

EXHIBIT A

LEGAL DESCRIPTION

BEGINNING AT A POINT 208.71 FEET SOUTH AND 208.71 FEET WEST OF THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 17 NORTH, RANGE 4 EAST IN HAMILTON COUNTY, INDIANA; THENCE WEST 120 FEET TO A POINT; THENCE NORTH 208.71 FEET TO A POINT; THENCE EAST 120 FEET TO A POINT; THENCE SOUTH 208.71 FEET TO THE PLACE OF BEGINNING.

EXCEPT THAT PART CONVEYED TO THE TOWN OF FISHERS BY WARRANTY DEED RECORDED OCTOBER 22, 1997 AS INSTRUMENT NO. 9745098 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA.

LAND ACQUISITION AGREEMENT

This Land Acquisition Agreement (the "Agreement") is executed as of the ___ day of December, 2023, by and among Rebar CityView, LLC, an Indiana limited liability company ("Buyer"), and the City of Fishers Redevelopment Commission, a commission of the City of Fishers ("City") authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "RDC" and together with the Buyer, the "Parties"), on the following terms and conditions:

Recitals

WHEREAS, since 2012, the City has worked to fulfill its master plan of creating a sustainable, pedestrian friendly, downtown city core where City residents live, work and play (the "Master Development Plan");

WHEREAS, as part of the Master Development Plan, the City has (a) worked with developers to develop large, mixed-use developments that include apartments, condominiums, office space and retail; (b) incented multiple high-growth, high-technology businesses to locate to the area; (c) in 2016, entered into an agreement with the State of Indiana for a portion of the area to be designated a certified technology park; and (d) announced more than a Billion Dollars of aggregate investment in the City's Life Sciences Park, development of the Andretti corporate complex and museum and an event center and arena that will be home to the Indy Fuel hockey team;

WHEREAS, as part of its Master Development Plan, the City continues to desire to assimilate parcels of land owned by multiple owners within the City's Nickel Plate District for economic development projects;

WHEREAS, the Development Land is located in the City's Nickel Plate District, and more specifically, immediately east of First Internet Bank's new corporate headquarters, and is owned by multiple owners;

WHEREAS, the City has requested, and Buyer has agreed to acquire the Development Land, if the RDC will agree to purchase the Development Land for the Land Acquisition Price; and

WHEREAS, the RDC has determined that it is in the best interest of the City and is pursuant to the Master Development Plan to purchase the Development Land from Buyer in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. DEFINED TERMS

City Closing shall mean the date on which the RDC (or its Permitted Assignee) acquires the Development Land from Buyer.

City Closing Date shall mean a date of closing which shall be no sooner than September 1, 2024 or later than September 1, 2025 unless the Parties otherwise mutually agree in writing to alter City Closing Date.

Closing Costs shall mean all recording fees, escrow closing costs, and such other closing fees, costs, and charges customarily associated with a commercial real estate closing.

Commitment shall mean a title insurance commitment for an owner's policy of title insurance that: (a) is issued by the Title Insurer; and (b) commits to insure marketable fee simple title to the Development Land, as applicable.

Current Year Taxes shall mean the Real Estate Taxes assessed for, and first becoming a lien against, the Development Land during the year in which the City Closing occurs.

Deed shall mean a limited warranty by which the Buyer shall convey its interest in the Development Land together with all improvements thereon to the RDC (or its Permitted Assignee), which deed shall be subject only to (a) the Permitted Exceptions; and (b) matters created or consented to by City or a developer, as applicable.

Demolition shall mean dismantling, razing and removing the building, structures and improvements located on the Development Land together with clearing all remaining debris from the Development Land following such Demolition.

Development Land shall mean the six (6) parcels of real property generally identified on **Exhibit A**.

Event of Default shall have the meaning set forth in Subsection 6(a).

Inspections shall mean all due diligence, including, without limitation, necessary environmental reviews and assessments and the Survey, to determine that the Development Land is suitable for development of residential housing and retail amenities in accordance with the Laws.

Land Acquisition Price shall mean Nine Million Seven Hundred Seventy Thousand Dollars ($9,770,000) *plus* Developer's documented, third-party costs related to Utility Relocation and Demolition; such total Land Acquisition Price shall not to exceed Eleven Million Nine Hundred Sixty Thousand Dollars ($11,960,000) together with Seven and one-half percent (7.5%) interest from September 1, 2024 until the date the Land Acquisition Price is paid by the Commission. The projected Land Acquisition Price is summarized on **Exhibit B**.

Laws shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the City's Unified Development Ordinance and Nickel Plate Code.

Permitted Assignee shall mean a third-party entity to which the RDC assigns its right to acquire the Development Land and perform its other obligations (or a portion thereof) in accordance with

Section 4.

Permitted Exceptions shall mean: (a) the lien of Current Year Taxes and Assessments not delinquent; (b) subject to Section 8, any exceptions to title reflected in the Commitment at the time that Buyer acquires the Development Land; and (c) such other matters as are accepted by Buyer or in writing or which Buyer (as applicable) is deemed to have waived pursuant to the terms and conditions of this Agreement.

Project Agreement shall mean that certain **________**, 2023 Project Agreement by and among the City of Fishers, Fishers Economic Development Commission, Fishers Town Hall Building Corporation, RDC and HighGround Fishers I, LLC, as assigned by that certain Assignment of Project Agreement to Buyer on December **___**, 2023 (the "**Assignment**").

Real Estate Taxes shall mean all real estate taxes levied on, against, or with respect to the Development Land.

Survey shall mean an ALTA survey of the Development Land, certified as of a current date by a reputable licensed surveyor; which Survey shall show that the Development Land is suitable for development.

Title Insurer shall mean First American Title Insurance Company (Gina Longere).

Utility Relocation shall mean the relocation of water, stormwater and electric utilities that currently traverse the Development Land and prevent redevelopment of the Development Land.

2. **RDC's Obligations**.On the City Closing Date, RDC shall either (a) acquire the Development Land from the Buyer; or (b) assign this Agreement to a Permitted Assignee and cause the Permitted Assignee to acquire the Development Land from the Buyer, all as set forth in Section 4 below. If the RDC assigns this Agreement to Permitted Assignee, as contemplated herein, the RDC is specifically not released from its obligations hereunder until such time as the Permitted Assignee pays the Land Acquisition Price to the Buyer, as contemplated herein.

3. **Buyer's Obligations**.Buyer shall: (a) acquire the Development Land on or before (i) the dates set forth in the purchase and sale agreements for the Development Land; (b) complete the Demolition by or before September 1, 2024; (c) perform the Inspections to determine whether the Development Land is suitable for residential and commercial development in accordance with the Laws and promptly provide the RDC the results of all such Inspections pursuant to Section 8; (d) order the title commitment for the Development Land and promptly provide such title work to the RDC; (e) on the City Closing Date, transfer and convey the Development Land to the City for the Land Acquisition Price and pursuant to the terms included herein; and (f) execute and perform all obligations included in this Agreement

4. **Purchase, Sale and City Closing**

4.01. Purchase and Sale. Subject to the terms and conditions of this Agreement, Buyer hereby agrees to sell and convey to RDC, and RDC hereby agrees to purchase and acquire from Buyer, all of Buyer's assignable and transferable right, title and interest in and to the Development

Land.

4.02. Land Acquisition Price. The Land Acquisition Price shall be paid by RDC to Buyer at the Closing on the Closing Date.

4.03. City Closing. Subject to Section 8, The RDC's obligation to close on the acquisition of the Development Land from the Buyer is absolute and unconditional. The City Closing shall occur with Title Insurer on the City Closing Date (unless the parties mutually agree in writing upon another place, time or date). Notwithstanding any other provision in this Agreement to the contrary, at any time prior to September 1, 2024, Buyer may give notice to RDC that it (i) intends to consummate the redevelopment project contemplated by the Project Agreement and (ii) is terminating this Agreement effective immediately. Upon such notice and termination, this agreement shall be of no further force and effect and neither party shall have any rights or obligations hereunder.

4.04. Possession. Possession of the Development Land shall be delivered to RDC at the City Closing, subject only to the Permitted Exceptions.

4.05. Closing Costs. RDC shall pay, on the Closing Date, all closing costs. Except as otherwise provided herein, (a) each party shall pay its own attorneys' fees related to the City Closing; and (b) Buyer shall pay for the Inspections, including the Survey.

4.06. Closing Deliveries. At the City Closing:

A. Buyer shall deliver the (1) the Deed; (2) a vendor's affidavit from in form and substance such that the Title Insurer will issue the Title Commitment; (3) a certification that all of the representations and warranties set forth in Section 5 remain true and accurate in all respects as of the City Closing Date; and (4) any other documents reasonably requested by Title Insurer and or the RDC;

B. RDC shall pay the Closing Costs by wire transfer of immediately available funds;

C. RDC shall pay for the owner's policy of title insurance for the Development Land;

D. Such other customary documents or instruments as required to be delivered in connection with the City Closing (whether required by the other party or the Escrow Agent); and

E. Each party shall be responsible for its own legal fees incurred in connection with this Agreement and the City Closing.

F. RDC shall be liable for all taxes accruing on or after the City Closing Date. Buyer shall be responsible for all other taxes.

5. Representations and Warranties.

(a) RDC. RDC represents and warrants to Buyer that: (i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) RDC is the governing body of the City of Fishers Redevelopment Department and is organized and existing under the laws of the State of Indiana; (iii) it has the power: (A) to enter into this Agreement; and (B) to perform its obligations hereunder; (vii) it has been duly authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder, (viii) this Agreement is the legal, valid, and binding obligation of it; and (ix) it has not engaged or dealt with any real estate broker or agent in connection with the Development Land or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction or otherwise by, through, or as a result of, the acts or omissions of RDC.

(b) Buyer. Buyer represents and warrants to the RDC that: (i) Buyer is an Indiana limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) it has the authority: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) it duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of Buyer; (vi) neither it nor any party affiliated with it has engaged or dealt with any real estate broker or agent in connection with the Development Land, or this transaction and no person or entity is entitled to claim a commission or fee in connection with this transaction by, through, or as a result of, the acts or omissions of Buyer or any party affiliated with Buyer; and (vii) it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and Buyer will state, in all solicitations or advertisements for employees placed by or on behalf of Buyer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

6. Default.

(a) Events of Default. It shall be an "**Event of Default**" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it.

(b) General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition; which right, in the Event of Default by RDC, is specifically intended to give Buyer the right to seek specific performance of RDC's obligation to purchase the Development Land hereunder); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. Any past due payments due under this Agreement (specifically including the payment of the Land Acquisition Price) shall bear interest at the rate of 12% per annum until paid. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 12% per annum.

(c) No Remedy Exclusive; Limitation. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Agreement or by the Laws. In no event shall any party hereunder be liable to the other for punitive or consequential damages as a consequence of an Event of Default by such party. In the event either party hereto employs an attorney in connection with Claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable fees and expenses, including attorneys' fees, incurred in connection with such Claims. The term "prevailing party" as used in this Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise.

7. Notice.Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to City at 8701 E 116th Street, Suite 270, Fishers, Indiana 46038, Attn: Scott Fadness, Mayor, with copies to: Jennifer Messer (via email only at jennifercmesserlaw@gmail.com) and to Buyer at 8770 North Street, Fishers, Indiana 46038, Attn: Tom Dickey. Each of the parties may change its address for notice from time to time by delivering notice to the other party as provided above.

8. Inspections and Title Commitment. Upon receipt, Buyer shall promptly provide RDC the (a) title commitment, and (b) results of Inspections, for each parcel of the Development Land. Within twenty (20) business days, the RDC shall provide written notice (via email to Tom Dickey at tom@rebardev.com) that, based on its commercially reasonable discretion, it approves, rejects or requires further action concerning the title commitment and/or Inspection result(s), because it believes the subject Development Land is not suitable for retail or residential development. For the avoidance of doubt, the only basis on which the RDC may reject or require further action pursuant to this Section 8, is that the RDC commercially reasonably determines that the results of an Inspection or the title commitment indicate that the Development Land cannot be developed for commercial or retail development. If the RDC fails to respond with the ten-day (10-day) period described herein, the subject title commitment or

Inspection result(s) shall be deemed approved. Buyer's satisfaction of the terms of this Section 8, shall be a condition precedent to the RDC's unequivocal obligation to purchase (or cause the Permitted Assignee to purchase) the Development Land for the Land Acquisition Price.

9. Merger, Project Agreement & Indemnification. All prior agreements, understandings, and commitments related to the Development Land, if any, are hereby superseded, terminated, and merged herein, and shall be of no further force or effect; provided however, if properly assigned by Company (as defined in the Project Agreement) and assumed by Buyer, the Project Agreement shall remain in full force and effect except that, upon Closing (as specifically defined in the Project Agreement), this Agreement shall, automatically and without further action of the Parties, terminate and be of no further force or effect. Moreover, Buyer shall hold harmless and indemnify RDC, the City of Fishers, Fishers Economic Development Commission and Fishers Town Hall Building Corporation from any loss from and against any and all Claims arising from: (i) the Assignment, including, without limitation, termination of the Project Agreement; (ii) breaches by Buyer under contracts to which Buyer is a party, to the extent that such contracts relate to the performance of any work on the Development Land by Buyer or any party acting by, under, through or on behalf of Buyer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Development Land by Buyer or any party acting by, under, through or on behalf of Buyer; and/or (iv) the negligence or willful misconduct of Buyer or any party acting by, under, through, or on behalf of Buyer

10. Miscellaneous. This Agreement shall inure to the benefit of, and be binding upon RDC and Buyer, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Buyer waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Buyer may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by RDC and Buyer. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Buyer and RDC or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Development Land is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[signatures on following pages]

IN WITNESS WHEREOF, RDC and Buyer have executed this Land Acquisition Agreement as of the day and year first written above.

"**RDC**"

FISHERS REDEVELOPMENT COMMISSION

By:________________________________
Damon Grothe, President

ATTEST:

By:__________________________
Anderson Schoenrock, Secretary

“BUYER”

REBAR CITYVIEW, LLC

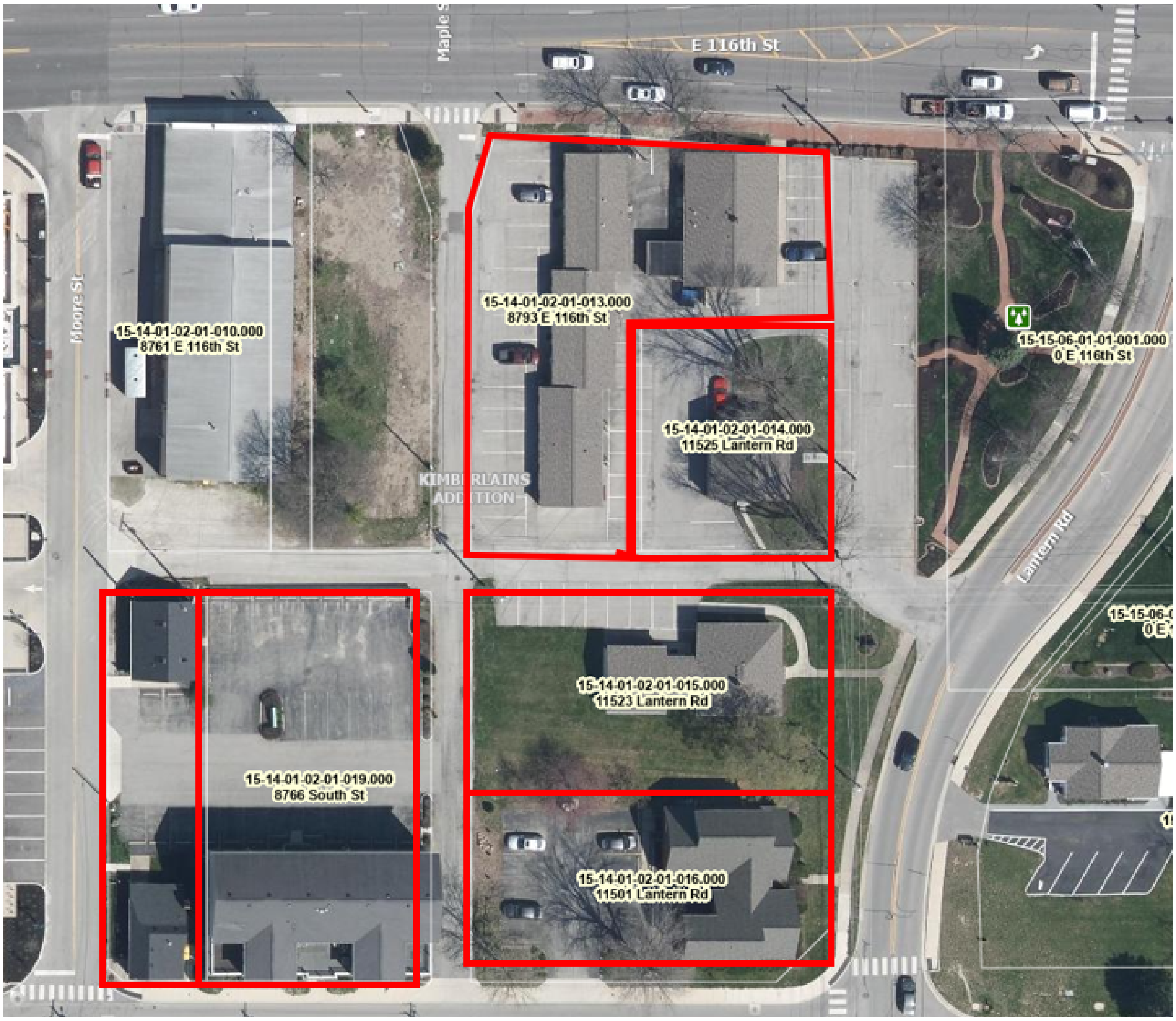
By: Rebar Companies, LLC

By: ________________________________

____

US.119364501.01

EXHIBIT A



US.119364501.01

EXHIBIT B

City View Land Acq, Demo, Utility Relo	
12/14/2023	
Demo	
Phase 1 - Feb 2024	$ 250,000.00
Phase 2 - April 2024	$ 250,000.00
Total Demo	**$ 500,000.00**
Utility Relocation	
Electric Line Relocation	$ 75,000.00
Remove Electric Line	$ 140,000.00
Comcast Cable (attached to Duke poles)	$ 80,000.00
Windstream Communications (attached to Duke poles)	$ 80,000.00
HSE School Corp Fiber (Duke pole at SW corner South & Lantern)	$ -
Lumen (Level 3 - attached to Duke poles)	$ 80,000.00
AT&T Distribution	$ 80,000.00
AT&T ILEC	$ 80,000.00
KDL/Metronet (attached to Duke poles)	$ 30,000.00
TCA (TCG LNS) - AT&T	$ 30,000.00
20" Water Main Relocation	$ 280,000.00
8" x 20" Water Tap	$ 40,000.00
Remove Water Line	$ 40,000.00
Hot Tap	$ 100,000.00
Remove Storm Structures	$ 25,000.00
Remove 38x50 Elliptical RCP	$ 70,725.00
Remove RCP Storm Pipe	$ 76,590.00
Install Storm Manhole	$ 70,000.00
Install Storm Inlet	$ 14,000.00
Install 15" RCP Storm	$ 5,625.00
Install 24" RCP Storm	$ 21,750.00
Install 30" RCP Storm	$ 31,000.00
Install 48" RCP Storm	$ 20,150.00
Total without contingency	$ 1,469,840.00
Contingency (15%)	$ 220,476.00
Total Utility Relocation	**$ 1,690,316.00**
Land Acquisition	
Wiener Brothers LLC	$ 1,430,000.00
Broker fee (Wiener Bros.)	$ 42,500.00
8775 E 116 LLC, 11525 Lantern LLC, & 11523 Lantern LLC	$ 5,197,500.00
Mudsock Properties LLC	$ 750,000.00
Hageman	$ -
Fishers Office Group LLC	$ 2,250,000.00
Closing Costs	$ 100,000.00
Total Land Acq.	**$ 9,770,000.00**
Total	**$ 11,960,316.00**

RESOLUTION FRC 04R122623 APPROVING LAND ACQUISITION AGREEMENT (CITY VIEW)

WHEREAS, Rebar CityView, LLC ("Buyer") is a sister company to Rebar Development, an Indiana real estate development company that has delivered complex multi-family, office, retail and community amenities across Indiana;

WHEREAS, Buyer has assumed certain rights from HighGround Fishers I, LLC, an Indiana limited liability Buyer and HighGround Fishers I, Inc., an Indiana corporation (jointly, the "Hageman Entities") to develop and construct a mixed-use development consisting of (i) approximately one hundred eighty-four (184) luxury, age restricted, active adult (55 and over in conformance with the Housing for Older Persons Act) residential units and (ii) approximately sixteen thousand, five hundred square feet (16,500 sq. ft.) of commercial/retail and restaurant space along 116th Street adjacent to the First Internet Bank building;

WHEREAS, because of rising construction costs and the difficulty of assembling multiple parcels of real property, Buyer has requested that the City of Fishers Redevelopment Commission ("Commission") enter into a land acquisition agreement with Buyer so that Buyer can proceed with land acquisition, utility relocation and demolition of the improvements on the Development Land;

WHEREAS, the City desires to enter into a land acquisition agreement substantially similar to the Land Acquisition Agreement attached hereto and incorporated herein as **Exhibit A** (the "Agreement"), if Buyer will proceed with land acquisition, utility relocation and demolition of the improvements on the Development Land in furtherance of the Project; and

WHEREAS, capitalized terms used but not defined herein are used with the meaning included in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission meeting in regular session as follows:

Section 1. The Commission hereby approves an agreement substantially similar to the Agreement.

Section 2. The President and Secretary of the Commission are authorized to execute an agreement substantially similar to the Agreement.

Section 3. This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this **_____**th day of December, 2023.

REDEVELOPMENT COMMISSION OF THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA

YAY **NAY**

	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, Three Municipal Drive, Fishers, Indiana, 46038.

Exhibit A
[separately included]

FIRST AMENDMENT TO PROJECT AGREEMENT

This First Amendment to Project Agreement (this "First Amendment") is executed as of the ___ day of ________, 2023, by and among The Village Holding Group, LLC, an Indiana limited liability company ("Developer"), the City of Fishers, Indiana, an Indiana municipal corporation ("City"), the City of Fishers Economic Development Commission, the Economic Development Authority for the City of Fishers (the "EDC"), and the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. ("RDC" and together with Developer, City and EDC, the "Parties"), on the following terms and conditions:

Recitals

WHEREAS, on or about June 1, 2023, the Parties entered into that certain Project Agreement that, among other rights and obligations, governs (a) Developer's development and construction of a multi-family, townhome and condominium development on the Project Site, and (b) the City providing certain economic development incentives to assist with the Project (the "Agreement");

WHEREAS, since entering into the Agreement, Developer has requested to extend the Outside Closing Date for the Project, and the City has agreed to the requested extension;

WHEREAS, unless provided herein, this First Amendment does not otherwise change the obligations of the Developer, or the incentives provided by the City;

WHEREAS, unless otherwise specifically stated, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement; and

WHEREAS, unless specifically amended by reference herein, all remaining terms and conditions of the Agreement shall continue in full force and effect and are hereby ratified and affirmed.

NOW THEREFORE, the foregoing recitals are incorporated into this First Amendment by reference to such recitals and in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and City Bodies agree as follows:

<u>Agreement</u>

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Term "Outside Closing Date" as defined in Section 1 "Defined Terms" of the Agreement shall be replaced in full as follows:

"**Outside Closing Date** shall mean **June 30, 2024**."

2. The Agreement, as amended by this First Amendment, constitutes the entire agreement and understanding of Developer and City Bodies with respect to the Project and supersedes all prior agreements, understandings, letters, negotiations and discussions, whether oral or written, relating thereto. This First Amendment may be executed in separate counterparts, and it shall be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Amendment. Electronic signatures shall have the same force and effect as original signatures. In the event of

any conflict or inconsistency between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall govern and control.

SIGNATURES ON FOLLOWING PAGES

R121823E

IN WITNESS WHEREOF, the City, EDC, RDC and Developer have executed this Project Agreement as of the day and year first written above.

"CITY"

CITY OF FISHERS, INDIANA

By: ______________________________
Scott Fadness, Mayor

“EDC”

CITY OF FISHERS ECONOMIC
DEVELOPMENT COMMISSION

By: ________________________________

"**RDC**"

FISHERS REDEVELOPMENT COMMISSION

By:__________________________________
Damon Grothe, President

ATTEST:

By:____________________________
Brad Johnson, Secretary

“**DEVELOPER**”

The Villages Holding Group, LLC

By: ________________________________

Its: ______________________________

RESOLUTION NO. R121823C

RESOLUTION APPROVING FIRST AMENDMENT TO PROJECT AGREEMENT (ONPOINT)

WHEREAS, OnPoint Innovation Park 3, LLC, an Indiana limited liability company ("Developer"), is a sister company to Mayer Najem Construction, a Fishers-based construction company that has developed and constructed healthcare and other facilities throughout Indiana and in several other states;

WHEREAS, previously, Developer, the City of Fishers, Hamilton County, Indiana ("City") and the City of Fishers Redevelopment Commission (the "Commission"), entered into a certain Project Agreement pursuant to which Developer agreed to invest not less than Fifteen Million and no/100 Dollars ($15,000,000.00) developing and constructing a Class-A, industrial building and commercial office building of approximately one hundred thousand square feet (100,000) within the Fishers Life Sciences Park, if the City and Commission provided certain incentives specifically described in the Project Agreement, among other rights and obligations (the "Agreement") of the Parties;

WHEREAS, the Agreement required the "Closing Date" to occur by or before December 31, 2023;

WHEREAS, the City, Commission and Developer desire to extend the date by which Closing must occur to June 1, 2024 pursuant to the First Amendment To Project Agreement attached hereto and incorporated herein as **Exhibit A** (the "First Amendment");

WHEREAS, the First Amendment does not otherwise change the obligations of the Developer, or the incentives provided by the City or Commission.

WHEREAS, capitalized words used but not defined herein are used with the meaning ascribed to such terms in the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FISHERS, HAMILTON COUNTY, INDIANA, meeting in regular session as follows:

Section 1. The City Council hereby approves a first amendment substantially similar to the First Amendment.

Section 2. The Mayor is hereby authorized to execute a first amendment substantially similar to the First Amendment.

Section 3. This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City Council for the City of Fishers, Hamilton County, Indiana this _18th___ day of December, 2023.

COMMON COUNCIL OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA

R121823C

YAY		NAY	ABSTAIN
	John Weingardt, President		
	Cecilia Coble Vice President		
	C. Pete Peterson, Member		
	Brad DeReamer, Member		
	Selina Stoller, Member		
	Todd Zimmerman, Member		
	Jocelyn Vare, Member		
	Crystal Neumann, Member		
	David Giffel, Member		

I hereby certify that the foregoing Ordinance/ Resolution was delivered to City of Fishers Mayor Scott Fadness on the __18th______ day of __December___,2023 at ____________p.m.

ATTEST:
Jennifer L. Kehl, Fishers City Clerk

MAYOR'S APPROVAL

____
Scott A. Fadness, Mayor

_____**December 18, 2023**_____
DATE

MAYOR'S VETO

____
Scott A. Fadness, Mayor

____
DATE

CITY OF FISHERS SEAL INDIANA

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, One Municipal Drive, Fishers, Indiana, 46038.

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law." Lindsey Bennett"

FIRST AMENDMENT TO PROJECT AGREEMENT

This First Amendment to Project Agreement ("First Amendment") is executed as of the ___ day of December, 2023, by and among OnPoint Innovation Park 3, LLC an Indiana limited liability company ("Developer"), the City of Fishers, Indiana, an Indiana municipal corporation ("City"), and the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. ("Commission" and together with the Developer and City, the "Parties", or each a "Party"), on the following terms and conditions:

Recitals

WHEREAS, on or about May 15, 2023, the Developer, City and Commission entered into that certain Project Agreement pursuant to which Developer agreed to invest not less than Fifteen Million and no/100 Dollars ($15,000,000.00) developing and constructing a Class-A, industrial building and commercial office building of approximately one hundred thousand square feet (100,000) within the Fishers Life Sciences Park, if the City and Commission provided certain incentives specifically described in the Project Agreement, among other rights and obligations (the "Agreement") of the Parties;

WHEREAS, the Agreement required the "Closing Date" to occur by or before December 31, 2023;

WHEREAS, the Parties now desire to extend the date by which Closing must occur;

WHEREAS, unless provided herein, this First Amendment does not otherwise change the obligations of the Developer, or the incentives provided by the City;

WHEREAS, unless otherwise specifically stated, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement; and

WHEREAS, unless specifically amended by reference herein, all remaining terms and conditions of the Agreement shall continue in full force and effect and are hereby ratified and affirmed.

NOW THEREFORE, the foregoing recitals are incorporated into this First Amendment by reference to such recitals and in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The definition of "Closing Date" included in Section 3 of the Agreement shall be replaced in full as follows:

"Closing Date shall mean the date on which the City transfers and conveys the Site to Developer, which Date shall not be later than June 1, 2024, except that the Closing Date shall be extended day for day for each day that Developer demonstrates it is unable to complete its inspections of the Site because of trailers and other large equipment located on the Site."

3. The Agreement, as amended by this First Amendment, constitutes the entire agreement and understanding of Developer, the City and Commission with respect to the Project and supersedes all prior agreements, understandings, letters, negotiations and discussions, whether oral or written, relating thereto. This First Amendment may be executed in separate counterparts, and it shall be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Amendment. Electronic signatures shall have the same force and effect as original signatures. In the event of any conflict or inconsistency between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall govern and control.

[*signatures included on following pages*]

IN WITNESS WHEREOF, City, the Commission and Developer have executed this Project Agreement as of the day and year first written above.

"CITY"

CITY OF FISHERS, INDIANA

By: ______________________________
Scott Fadness, Mayor

“COMMISSION”

FISHERS REDEVELOPMENT COMMISSION

By:__________________________________
Damon Grothe, President

ATTEST:

By:____________________________
Brad Johnson, Secretary

“DEVELOPER”

ONPOINT INNOVATION, LLC

By:__________________________________

Its: __________________________________

[*separately provided*]

Council Action Form

MEETING DATE	December 18, 2023			
TITLE	Resolution Approving First Amendment To Project Agreement (OnPoint)			
SUBMITTED BY	Name & Title: Megan Baumgartner, Economic Development Director Department: Economic Development			
MEETING TYPE	☐Work Session ☐Executive	**X** Regular	☐Special	☐Retreat
AGENDA CLASSIFICATION	☐Consent	☐Ordinance	**X** Resolution	**X** Regular
ORDINANCE/RESOLUTION (New ordinances or resolutions are assigned a new number)	**X** 1st Reading	**X** 2nd Reading	Public Hearing	**X** 3rd Reading ☐Final Reading
	Ordinance #:		Resolution #: R121823C	
CONTRACTS (Contracts include other similar documents such as agreements and memorandum of understandings. Check all applicable boxes pertaining to contracts)	**X** Contract **required** for this item		☐Signed copy of contract attached	
	☐Seeking award or other scenario & **will provide contract** at a later date		☐ **No contract** for this item	
	X Contract **over** $50,000 Please mark the box in the other column that pertains to this contract.		☐ Services ☐ Capital Outlay ☐ Debt Services	
HAMILTON COUNTY (Some documents need recorded by the City Clerk)	☐Document **must** be recorded with the County Recorder's Office ☐Wait 31 days **prior to** filing with the County Recorders' Office		X Document **does not need** recorded with the County Recorder's Office	

Form Revised: 03/20/2019

APPROVALS/REVIEWS	☐ Assistant/Deputy Department Head	☐ Controller's Office
	X Department Head	☐ Finance Committee
	☐ Deputy Mayor	☐ Technical Advisory Committee
	☐ Mayor	☐ Other:
	☐ Legal Counsel – *Name of Reviewer:* Jennifer C. Messer	

BACKGROUND (Includes description, background, and justification)	OnPoint Innovation Park 3, LLC, the City and the City of Fishers Redevelopment Commission, previously entered into a certain Project Agreement pursuant to which Developer agreed to invest not less than Fifteen Million and no/100 Dollars ($15,000,000.00) developing and constructing a Class-A, industrial building and commercial office building of approximately one hundred thousand square feet (100,000) within the Fishers Life Sciences Park, if the City and Commission provided certain incentives specifically described in the Project Agreement, among other rights and obligations (the "Agreement") of the Parties. The Agreement required the "Closing Date" to occur by or before December 31, 2023, and the City, Commission and Developer desire to extend the date by which Closing must occur to June 1, 2024. The First Amendment does not otherwise change the obligations of the Developer, or the incentives provided by the City or Commission.

BUDGETING AND FINANCIAL IMPACT (Includes project costs and funding sources)	Budgeted $:	Not an additional budget item
	Expenditure $:	None
	Source of Funds:	None
	Additional Appropriation #:	
	Narrative:	
OPTIONS (Include *Deny Approval* Option)	1.	Approve the Resolution
	2.	Reject the Resolution
	3.	
	4.	

PROJECT TIMELINE	
STAFF RECOMMENDATION (Board reserves the right to accept or deny recommendations)	Approve the First Amendment.
SUPPLEMENTAL INFORMATION (List all attached documents)	

FIRST AMENDMENT TO PROJECT AGREEMENT

This First Amendment to Project Agreement (the "First Amendment") is executed as of the ___ day of December, 2023, by and among Rebar South Street, LLC, an Indiana limited liability company ("Developer"), Rebar South Street, Inc., an Indiana corporation ("Owner" and together with the Developer, the "Company"), the City of Fishers, Hamilton County, Indiana, an Indiana municipal corporation ("City"), the City of Fishers Economic Development Commission, the Economic Development Authority for the City of Fishers (the "EDC"), the City of Fishers Redevelopment Commission, a commission of the City authorized and existing pursuant to Ind. Code § 36-7-14 *et. seq*. (the "RDC"), and the Fishers Town Hall Building Corporation, an Indiana nonprofit corporation (the "Building Corp."), on the following terms and conditions:

Recitals

WHEREAS, Company and the City Bodies are parties to that certain __________, 2023 Project Agreement pursuant to which Company agreed to complete (a) development and construction of five (5) multi-use buildings that are each three (3) stories or four (4) stories tall and collectively include (i) eighty-two (82) multi-family units, (ii) approximately 8,244 sq. ft. of small business units, and (iii) 20,516 sq. ft. of additional commercial office space; and (b) invest approximately Twenty-Three Million and no/100 Dollars ($23,000,000.00) in the City, if the City Bodies provided certain incentives, among other rights and obligations of the Company and City Bodies included in such project agreement (the "Agreement");

WHEREAS, the Agreement defined the "Outside Closing Date" for Closing on the Project as December 1, 2023;

WHEREAS, the City Bodies and Company desire to extend, effective as of November 30, 2023, the Outside Closing Date;

WHEREAS, unless provided herein, this First Amendment does not otherwise change the obligations of the Developer, or the incentives provided by the City;

WHEREAS, unless otherwise specifically stated, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement; and

WHEREAS, unless specifically amended by reference herein, all remaining terms and conditions of the Agreement shall continue in full force and effect and are hereby ratified and affirmed.

NOW THEREFORE, the foregoing recitals are incorporated into this First Amendment by reference to such recitals and in consideration of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The definition of "Outside Closing Date" included in Section 1, **Defined Terms** of the Agreement shall be replaced in full as follows:

“**Outside Closing Date** shall mean March 31, 2024.”

3. The Agreement, as amended by this First Amendment, constitutes the entire agreement and understanding of the Company and the City Bodies with respect to the Project and supersedes all prior agreements, understandings, letters, negotiations and discussions, whether oral or written, relating thereto. This First Amendment may be executed in separate counterparts, and it shall be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Amendment. Electronic signatures shall have the same force and effect as original signatures. In the event of any conflict or inconsistency between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall govern and control.

[*signatures included on following pages*]

R121823D

IN WITNESS WHEREOF, the City, EDC, RDC, Building Corp. and Company have executed this Project Agreement as of the day and year first written above.

"CITY"

CITY OF FISHERS, INDIANA

By: ______________________________
Scott Fadness, Mayor

"EDC"

CITY OF FISHERS ECONOMIC DEVELOPMENT COMMISSION

By: ___________________________________

"**RDC**"

FISHERS REDEVELOPMENT COMMISSION

By:__________________________________
Damon Grothe, President

ATTEST:

By:_______________________________
Brad Johnson, Secretary

"**BUILDING CORP**."

FISHERS TOWN HALL BUILDING CORPORATION

By: ____________________________________

Its: _____________________________

"**OWNER**"
REBAR SOUTH STREET, INC.

By: ____________________________________
Shelby M. Bowen, President

"**DEVELOPER**"
REBAR SOUTH STREET, LLC

By: ____________________________________
Shelby M. Bowen, Manager